

Multilingual TV - Community Appeal

708 North Tower, Oakridge Centre
650 West 41st Avenue, Vancouver, BC V5Z 2M9
Tel: 604-261-1234 Fax: 604-261-1222

BY HAND

August 14, 2000

Mr. Mel Cappe
Clerk of the Privy Council
and Secretary to the Cabinet
3rd Floor, Langevin Block, 80 Wellington Street
Ottawa, Ontario, K1A 0A3

Dear Mr. Cappe,

**Re: Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

Please find enclosed a copy of a petition to the Governor in Council that is being brought pursuant to subsection 28(1) of the *Broadcasting Act*. This petition requests the Governor in Council to set aside Decision CRTC 2000-219 dated July 6, 2000 and refer it back to the Commission for reconsideration. The petition is being filed on behalf of a broad coalition of local, regional and national multicultural groups identified in Appendix "A" of the executive summary, which is attached to the petition.

Pursuant to subsection 29(1) of the *Broadcasting Act*, a copy of this petition is being provided to the Secretary General of the CRTC. As a courtesy, a copy is also being forwarded to the parties directly affected by Decision CRTC 2000-219 — CHUM Limited, CFMT-TV and Craig Broadcast Systems Inc. We would expect that if any of these parties submit a Reply to this petition that they will reciprocate this courtesy and forward a copy of their Reply to our attention.

Yours very truly,



Mobina Jaffer
President
YWCA of Canada



Mason Loh
Director
United Way of the Lower Mainland

Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000

August 14, 2000

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

Table of Contents

<u>Tab</u>	<u>Document</u>	<u>Paragraph</u>
1	Executive Summary	
2	Petition	
	Introduction	1
	The Commission's Decision	3
	The Objective of this Petition	6
	The Petitioners	12
	a) Who Supports the Petition	13
	b) LM-TV is a National Issue	15
	Why the CRTC's Decision 2000-219 Should Be Set Aside	23
	1) The Decision Does Not Treat Canada's Ethnic Communities Equitably	26
	a) The Size of the Ethnic Population in Vancouver and Victoria	26
	b) The Composition of the Ethnic Market	29
	c) The Programming "Hole" in the Vancouver Market	33
	d) Demand for an Ethnic Television Station in Vancouver	40
	e) The Purchase of a Local Station?	44
	f) When Will the CRTC Ever License an Ethnic Service?	48
	2) The Decision Contravenes Government and CRTC Policy	52
	a) Federal Government Policies re Cultural Diversity	52
	b) The Commission's Ethnic Broadcasting Policy	62
	3) The Decision Denies Canadian Programming Choices	69
	a) The LM-TV Application	69
	b) Existing Ethnic Services in Vancouver	78
	c) Ethnic Specialty Services	81
	d) The Special Programming Channel	88
	4) The Views of the Dissenting Commissioners	92
	a) The Problems with the CHUM Application	93
	b) The CFMT Application	99
	c) The U.S. Threat	105
	Conclusion	108
	a) Setting Aside Decision CRTC 2000-219	108
	b) The Terms of the Reference Back to the Commission	111
	c) Service of Petition on CHUM, CFMT and Craig	114
3	Decision CRTC 2000-219	

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

Executive Summary

Members of Canada's multilingual communities were shocked on July 6 when the CRTC, by a narrow 3 to 2 vote, denied an application by CFMT-TV to operate a free, over-the-air ethnic television station in Vancouver and Victoria. In denying CFMT's application, the Commission has ignored the clear needs of over 800,000 residents of Vancouver who still do not have access to a free, over-the-air television station that can reflect their interests and which would be able to provide an accurate reflection of their lives in Canada. In short, the CRTC has denied members of Vancouver's growing ethnic communities what other Canadians take for granted — quality Canadian television programming in their languages of comfort made available by the public airwaves.

In these circumstances, Vancouver's multilingual communities want to know when the CRTC will allow them to have a television station so that they can identify their concerns, discuss their issues and tell their stories. As things presently stand, when they watch television, they do not see any reflection whatsoever of the reality of their lives in Canada. For all intents and purposes, they are not seen and they are not heard.

By this petition, the multilingual communities of Canada are asking the Governor in Council to correct a very serious licensing error made by the CRTC. If this decision is allowed to stand, it will seriously undermine our belief in multiculturalism and the principle that all Canadians are to be treated equally, regardless of their language or ethnic origin.

1) The Decision Does Not Treat Canada's Ethnic Communities Equitably

- over 800,000 residents in Vancouver are from diverse ethnic communities, exceeding the total population of Canadian cities such as Winnipeg, Quebec City, Halifax and St. John's, all of which have been licensed by the Commission to receive local, over-the-air television stations.
- Vancouver is second only to Toronto as the most ethnically and linguistically diverse city in Canada. Moreover, if its current rate of growth remains constant its ethnic population is projected to reach 1.8 million by the year 2006.
- Toronto and Montreal both have a free, over-the-air ethnic television station directed at their ethnic communities. Vancouver does not.
- the Vancouver television market already has five local English-language television stations, the same number as the Toronto market — an urban area that has more than twice the population. This number will soon rise to six.
- the multilingual communities in Vancouver, with a population of over 800,000, do not have even one free, over-the-air television station. This is simply not equitable.

2) The Decision is Contrary to Federal Government Policies

- in her Speech from the Throne last October, the Governor General spoke of Canada's diversity as being "a source of strength and creativity, making us modern and forward-looking." In his reply the next day, the Prime Minister, the Right Honourable Jean Chrétien, said that all Canadians must "have access to diverse Canadian stories, voices and images".
- in several recent speeches to international audiences, the Minister of Canadian Heritage, the Honourable Sheila Copps, has spoken about the need to promote cultural diversity in Canada and noted that Canada is "legislated multilingual".
- the CRTC has recently adopted an ethnic broadcasting policy that is intended to encourage the growth of high quality ethnic Canadian programming. However, if the CRTC cannot license a free, over-the-air ethnic television station in Vancouver, what is the purpose of its ethnic broadcasting policy? Where else in Canada could such a station be licensed, if not in Vancouver?

3) The Decision Does Not Provide Access to Canadian Programming Choices

- the multilingual communities in Vancouver have shown that they need to receive local, Canadian-produced television programming that addresses their particular concerns. CFMT's proposal would have provided this Canadian programming.
- without access to a free, over-the-air television station, members of these multilingual communities have to pay for discretionary ethnic television services that cost over \$600 per year. This is not the case for other Canadians.
- a new U.S. television station located in Bellingham, Washington will soon begin broadcasting ethnic programming into the Vancouver market diverting Canadian viewers and advertising revenues to the U.S. This will threaten the integrity of the Canadian broadcasting system.

4) The Views of the Dissenting Commissioners

- in its 3-2 majority vote, the two dissenting CRTC Commissioners were both from Western Canada. They would have approved CFMT's application.
- the two dissenting Commissioners noted that, as Vancouver's ethnic population grows, there will be an even greater need for an ethnic television station.

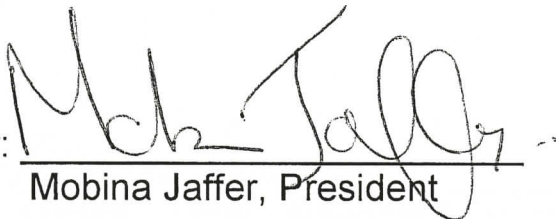
The CRTC's decision to deny CFMT a licence to operate an over-the-air ethnic television station in Vancouver is obviously wrong. Canadians of ethnic origin are entitled to equitable participation within the Canadian broadcasting system. When numbers warrant, they are entitled to receive the same kind of broadcasting services as other Canadians. This has not happened.

Decision CRTC 2000-219 should be referred back to the Commission.

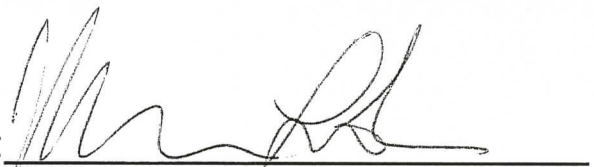
Appendix "A1"

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

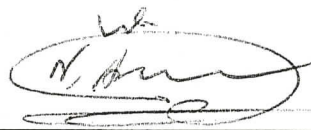
YWCA of Canada

per: 
Mobina Jaffer, President

United Way of the Lower Mainland

per: 
Mason Loh, Director

Canadian Ethnocultural Council

per: 
Art K. Hagopian, President

Canadian Race Relations Foundation

per: 
Moy Tam, Executive Director

Chinese Canadian National Council

per: 
May M. Cheng, President

Hellenic Canadian Congress (National)

per: 
Nick Panos, President

Appendix "A2"

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

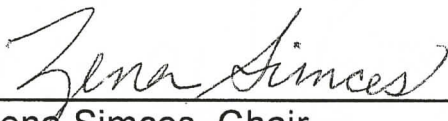
Canadian Polish Congress

per: 
Lucien Conrad, National President

Progressive Intercultural Community Services

per: 
Charan Gill, Executive Director

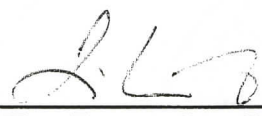
**Canadian Jewish Congress
(Pacific Region)**

per: 
Zena Simces, Chair

**National Congress of Black Women
Foundation**

per: 
Nalda Callender, Executive Director

**United Chinese Community Enrichment
Services Society (S.U.C.C.E.S.S.)**

per: 
Lilian To, Executive Director

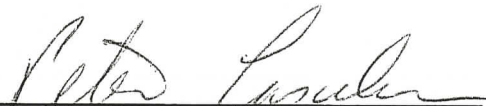
**Canadian Hispanic Congress,
BC Chapter**

per: 
Rosana Obando, President

Appendix "A3"

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

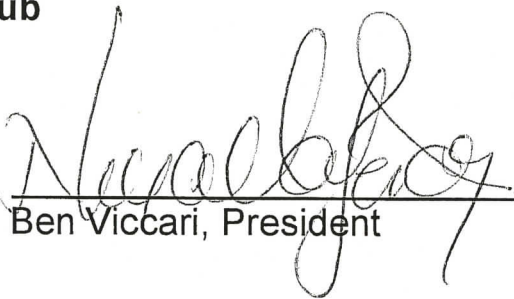
Hellenic Canadian Congress of BC

per: 
Peter Capadouca, President

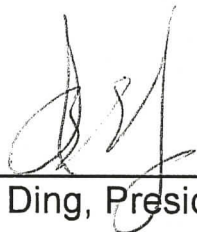
**Vancouver and Lower Mainland
Multicultural Family Support Services**

per: 
Shashi Assanand,
Executive Director

**Canadian Ethnic Journalists' & Writers'
Club**

per: 
Ben Viccari, President

Sunbrite Business Association

per: 
Alex Ding, President

BC Law Courts Education Society

per: 
Rick Craig, Executive Director

**Inter-Cultural Association of Greater
Victoria**

per: 
Jean McRae, Executive Director

Appendix "A4"

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

National Congress of Italian-Canadians

per: AS
Antonio Sciascia, President

**La Maison de la Francophone de
Vancouver**

per: MB
Marie Bourgeois, Executive Director

Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000

August 14, 2000

**Petition to the Governor in Council
Subsection 28(1) of the *Broadcasting Act*
Decision CRTC 2000-219 dated July 6, 2000**

Introduction

1. This petition is filed with the Governor in Council pursuant to subsection 28(1) of the *Broadcasting Act* (the "Act"). It is being filed by a broadly based coalition of local, regional and national Canadian ethnic groups (the "Petitioners") which are listed in paragraph 14 below.
2. The Petitioners seek an Order from the Governor in Council setting aside Decision CRTC 2000-219 (the "Decision") which was issued by the Canadian Radio-television and Telecommunications Commission (the "Commission" or "CRTC") on July 6, 2000. The Petitioners respectfully submit that the Decision should be referred back to the Commission for reconsideration on the basis of the existing public record of proceedings. The Petitioners believe that the Decision should be set aside because:
 - it is unjust to the large and diverse ethnic communities living in the greater Vancouver area who — with an estimated population base that exceeds 800,000 — are entitled to a free, over-the-air ethnic television station to serve their unique needs and interests;
 - it is contrary to long established federal government and CRTC policies that promote the principles of cultural diversity and pluralism and the view that the Canadian broadcasting system should be administered for the benefit of all Canadians;
 - it denies members of these ethnic communities access to Canadian television programming choices which would tell their stories, reflect their presence in Canada and allow them to more fully participate in Canadian society. In addition, it ignores the threat posed by a new U.S. station located across the border from Vancouver that intends to serve these ethnic communities from outside the Canadian broadcasting system; and
 - in issuing Decision CRTC 2000-219, the Commission was clearly divided with two dissenting opinions. The written views of these two dissenting Commissioners are highly persuasive and serve to underscore the significant licensing error made by the majority.

The Commission's Decision

3. Further to the Decision (a copy of which is appended to this petition at Tab 3), the Commission approved, by a narrow three to two majority vote, an application filed by CHUM Limited ("CHUM") for a broadcasting licence to operate an English-language television station in Victoria, British Columbia. The Commission also approved, by the same three to two majority vote, an application by CHUM for authority to operate a transmitter located in Vancouver to rebroadcast the signal of its new Victoria television station.
4. In approving these CHUM applications, the Commission denied competing applications brought by Craig Broadcast Systems Inc. ("Craig") and CFMT-TV, a division of Rogers Broadcasting Limited ("CFMT"). Craig had proposed a television station — to be known as "A-Channel on the Island" — to serve the residents of Vancouver Island.
5. For its part, CFMT had proposed to operate an ethnic television station in Vancouver that would be known as "LM-TV". In accordance with the CRTC's recently adopted ethnic broadcasting policy, at least 60% of the programming shown on LM-TV would qualify as ethnic programming. Moreover, the proposed station would have served a minimum of 15 language groups and at least 18 distinct ethnic groups in Vancouver on a monthly basis. A minimum of 50% of LM-TV's program schedule would have been Canadian programming capable of reflecting the reality of these various language and cultural groups within the Canadian broadcasting system. Simply put, LM-TV would have been a truly

Canadian programming service. CFMT also proposed to operate a transmitter to rebroadcast the signal of LM-TV in Victoria.

The Objective of this Petition

6. The Petitioners believe that, by denying CFMT's application, the Commission clearly missed a valuable opportunity to provide the ethnic residents of the Greater Vancouver area — or, as it is commonly known, "the Lower Mainland" — and Victoria with an over-the-air television station that would have added much needed programming diversity to the range of television services currently made available in this important television market. As it is, the Commission's Decision has effectively denied access to the Canadian broadcasting system by the large ethnic population that lives in this television market and which has clearly indicated its desire and need to receive such a television service.

7. It is our view that the Decision, to the extent that it denied the CFMT application, was wrongly decided by the Commission and derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1) of the *Act*. It must be understood that the Petitioners do not object, *per se*, to the licensing of CHUM to operate a local television station in Victoria. It is, instead, our view that the Commission derogated from the attainment of the objectives of the broadcasting policy by failing to approve the CFMT application, whether in conjunction with the new CHUM television station or alone.

8. Although the television stations proposed by CHUM and CFMT are technically in the same television market — the so-called "Vancouver extended television market" — they are directed at entirely separate demographic audiences. Moreover, the CHUM station will focus its local programming content on Victoria and other communities throughout Vancouver Island. As such, the two applications are not directly competitive with one another in terms of viewership or advertiser support. It was therefore open to the Commission to have approved both CHUM and CFMT. This being said, we do not take any position as to whether or not the Commission should, or should not, have licensed CHUM. Our objection to Decision CRTC 2000-219 relates solely to the denial of CFMT's application for LM-TV.

9. On this basis, we submit that the Decision should be set aside by the Governor in Council and referred back to the Commission for reconsideration pursuant to subsection 28(1). In so doing, the Governor in Council should stress to the Commission, further to subsection 28(2), to have particular regard to the requirement set out in subparagraph 3(1)(d)(iii) that the Canadian broadcasting system should reflect "the multicultural and multiracial nature of Canadian society." The Commission should also be directed to consider the ability of the Vancouver extended television market to support the newly licensed CHUM station and LM-TV.

10. We would hope that, upon reconsideration of Decision CRTC 2000-219 in light of Canadian broadcasting policies relating to the support of multiculturalism, the Commission will recognize that the new CHUM station and LM-TV can both be responsibly introduced into the Vancouver extended television market. As such, the Commission would license LM-TV in addition to the new CHUM station in Victoria. This is our preferred outcome to any referral back of Decision CRTC 2000-219 to the Commission pursuant to the Governor in Council's statutory authority.

11. Nonetheless, if, following such a reconsideration, the Commission confirms its earlier view that only one new over-the-air television station can be licensed, we submit that the requirements of subsection 3(1) of the *Broadcasting Act* dictate that a television station which would serve the interests of the estimated more than 800,000 members of the various ethnic communities in the Lower Mainland and Victoria should take precedence over the station proposed by CHUM for Victoria. In such a context, the Commission should, pursuant to subsection 28(3), rescind the issuance of the broadcasting licence to CHUM and issue a broadcasting licence to CFMT on terms and conditions to be established by the Commission.

The Petitioners

12. This petition is filed by a broadly based coalition of local, regional and national ethnic advocacy groups. All of these groups support the filing of this petition with the Governor in Council in accordance with subsection 28(1) of the *Act*. As Canadian citizens who are of an ethnic or linguistic origin other than English, French or aboriginal Canadian, they strongly believe that it is high time that they finally be permitted — as a group — to benefit from the Canadian broadcasting system to an equitable degree relative to other Canadians.

a) Who Supports the Petition

13. The Commission's decision to deny CFMT's application was a shocking one for members of the various ethnic communities, not just in the Vancouver and Victoria television market, but throughout Canada. These communities see the licensing of an over-the-air ethnic television station in the Lower Mainland as a "litmus test" with respect to the commitment of the CRTC and the current federal government to the policies of cultural diversity and pluralism.

14. These groups believe that if a free, over-the-air ethnic television station cannot be licensed in as rich and as culturally diverse a television market as the Lower Mainland and Victoria, one might legitimately question the entire notion of multiculturalism in Canada. This is why this petition in respect of Decision CRTC 2000-219 is, from our perspective, a national issue and is in the broader public interest. In this regard, the following ethnic advocacy groups have endorsed this petition:

Canadian Ethnocultural Council
 Canadian Jewish Congress (Pacific Region)
 Chinese Canadian National Council
 National Congress of Italian-Canadians
 Hellenic Canadian Council (National)
 Canadian Polish Congress
 Canadian Hispanic Congress (B.C. Chapter)
 National Congress of Black Women Foundation
 Canadian Ethnic Journalists and Writers Club
 YWCA of Canada
 United Way of the Lower Mainland

b) LM-TV is a National Issue

15. It is important for the Governor in Council to recognize that the licensing of an over-the-air ethnic television station in the Vancouver and Victoria television market is not merely a local issue of concern only to the ethnic communities living in these two cities. It is, instead, a national issue that affects the members of all the various ethnic communities, wherever they may live in Canada. This explains, in part, why this petition to the Governor in Council has received such widespread support from a variety of national ethnic advocacy groups.

16. If CFMT's application in respect of LM-TV had been approved by the Commission, there would have been three over-the-air ethnic television stations available across Canada — CFMT in Toronto, CJNT in Montreal and LM-TV in Vancouver. These stations would have been able to co-operate with each other with respect to a variety of programming initiatives. Moreover, they would certainly have worked very closely together to share local ethnic programming so that the different ethnic groups — regardless of which Canadian city in which they live — could see and speak to one another through the medium of television.

17. Although most English and French-speaking Canadians are undoubtedly unaware of this fact, ethnic Canadians invariably see themselves as being part of a single, national, ethnic community, regardless of whether they live in Vancouver, Calgary, Winnipeg, Toronto, Montreal or Halifax. Television programming that addresses their particular ethnic community is local to them from wherever in Canada it may originate. In other words, national programming is, to these ethnic communities, local programming.

18. In the case of the ethnic communities in the Lower Mainland and Victoria, because they have no local over-the-air television service, they are currently cut off from friends and relatives who may live in other regions of Canada. News or political issues that would be of interest to them, and which may be reported by either CFMT in Toronto or CJNT in Montreal, does not make it through to their television screens in Vancouver and Victoria. Similarly, local events taking place in Vancouver and Victoria cannot be shared with the larger ethnic community in other Canadian centres. The licensing of LM-TV by the Commission would have changed this state of affairs. As Mobina Jaffer noted at the Commission's February 21 hearing in Vancouver:

I myself am a refugee from Uganda. When Canadians brought us to this country, we were spread out across the country. I have relatives who live in Toronto. Our issues are the same but we are separated by the Rockies and sometimes we lose touch because we do not know what is happening to them.

We have a great need to know what is happening in Toronto. You may not think that, but for our community that is local news because that is how we come to know what is happening to those communities.¹

19. An example of how the licensing of LM-TV could have contributed to the participation of Vancouver and Victoria's ethnic communities in matters of national interest is provided by the federal government's proposal a number of years ago to impose so-called "landing fees" on applicants seeking landed immigrant status in Canada. This proposal, which brought to mind the infamous "head tax" imposed on Asian immigrants in the early 1900s, was not well received by ethnic communities across Canada.

20. In these circumstances, a number of Members of Parliament who spoke a variety of third-languages made use of the Ottawa news bureau facilities of CFMT to address the concerns of these communities. Following the lead of the Minister of Canadian Heritage, the Honourable Sheila Copps, who often uses CFMT's Ottawa bureau to reach the various ethnic communities, the then Minister of Citizenship and Immigration, the Honourable Sergio Marchi, gave several interviews in Italian on CFMT in which he explained the government's intentions with respect to the landing fees issue. Similarly, the Minister of Fisheries, the Honourable Herb Dhaliwal, provided an interview to the Punjabi community. These interviews, while shown on CFMT in Toronto, were never broadcast in Vancouver or Victoria even though they would have been of the greatest interest to the local multicultural communities and may have allayed some of their apprehensions relating to the proposed new government policy.

21. Another example is provided by a program produced by CFMT relating to the international AIDS conference that was held a few years ago in Vancouver. This program, which was shown only in Toronto, was one of the first to address this important health issue with respect to several of Toronto's ethnic communities. As important an issue as AIDS may be, it was just not getting the attention of the ethnic communities. This changed after the airing of CFMT's program. The irony is that, although CFMT's program dealt with an international conference that took place in Vancouver and which related to an important health issue of relevance to the local ethnic communities, residents of Vancouver were denied an opportunity to see it. It was as if AIDS was only an issue to be discussed by the English and French-speaking communities. This can only be described as a tragedy and a lost opportunity for the Canadian broadcasting system.

22. In a nutshell, this explains why the Commission's denial of CFMT's application in respect of LM-TV is so important for all ethnic Canadians, regardless of where they live in Canada. The licensing of LM-TV would have added one more outlet to this loose "network" of stations that would have been able to link the various ethnic communities across Canada. As it is, the large ethnic communities of the Lower Mainland and Victoria are, indeed, cut off by the Rockies from their friends and relatives in other Canadian cities. They are isolated from the broader ethnic community that lives in Toronto, Montreal and other urban areas. A television station such as that proposed by CFMT would assist in bringing these

¹ CRTC Public Hearing, February 21, 2000, Volume 1, page 183

communities together and help foster a truly Canadian ethnic identity. This is why all ethnic Canadians are concerned with Decision CRTC 2000-219.

Why the CRTC's Decision 2000-219 Should Be Set Aside

23. The Petitioners believe that Decision CRTC 2000-219, by failing to approve CFMT's application for a free, over-the-air ethnic television station, does absolutely nothing to enhance the diversity of television choices available in the Vancouver extended television market. Furthermore, it denies the ethnic communities who live in this market equitable participation in a broadcasting system that is supposed to belong to all Canadians. With respect, this result is not in the public interest.

24. In our view, the Commission's Decision defies any reasonably applied principles of logic and is clearly contrary to the needs and interests of the members of the many ethnic communities who reside in the Lower Mainland and Victoria. The special needs and interests of these communities would have been met by the licensing by the Commission of CFMT's application for an over-the-air ethnic television station in Vancouver. The Commission's failure to approve CFMT's application justifies, in our opinion, use of the Governor in Council's authority under the *Broadcasting Act* to set Decision CRTC 2000-219 aside and to refer it back to the Commission for reconsideration on the basis of the existing public record.

25. For ease of reference, we have organized this petition into four principal sections. These four headings set out the arguments why the CRTC's Decision should be set aside. These headings are:

- 1) Decision CRTC 2000-219 is unjust to Vancouver's ethnic communities;
- 2) Decision CRTC 2000-219 is contrary to longstanding federal government and CRTC policies relating to the promotion of cultural diversity and multiculturalism;
- 3) Decision CRTC 2000-219 denies members of Vancouver's ethnic communities access to Canadian television programming choices; and
- 4) Decision CRTC 2000-219 was not unanimously decided by the Commission. The two dissenting opinions are very persuasive in support of the licensing of CFMT's proposal for LM-TV.

1) Decision CRTC 2000-219 Does Not Treat Canada's Ethnic Communities Equitably

a) The Size of the Ethnic Population in Vancouver and Victoria

26. As surprising as it may seem, the ethnic population of the Lower Mainland and Victoria exceeds the total population of a variety of Canadian cities such as Winnipeg, Quebec City, Halifax and St. John's. The population of the Chinese-language community alone — 298,810 — exceeds the total population of cities such as Regina, Saskatoon and St. John's. Nonetheless, this large ethnic population does not have access to a local over-the-air ethnic television station, while all of these smaller Canadian cities have access to several local English or French-language over-the-air television stations.

27. A review of the following statistics taken from Statistics Canada's 1996 census data² is telling when compared to the local television services offered in these markets.

<u>Market</u>	<u>Population</u>	<u>Local Station</u>
Vancouver/Victoria (ethnic population)	800,000	<u>None</u>
Winnipeg	660,055	CBWT-TV (CBC) CKND-TV (Global) CKY-TV (CTV)
Quebec City	663,885	CFAP-TV (SRC) CFCM-TV (TVA)
Halifax	329,750	CBHT-TV (CBC) CJCH-TV (CTV) CIHF-TV (Global)
St. John's	172,090	CBNT-TV (CBC) CJON-TV (CTV)

28. The Canadian city that has a total population that is of the approximate size of the combined ethnic population of the Lower Mainland and Victoria — Edmonton, with a population of 854,225 — has four local, over-the-air English-language television stations; CBXT-TV (CBC), CFRN-TV (CTV), CITV-TV (Ind) and CKEM-TV (Ind). We are of the opinion that these statistics demonstrate quite clearly that the ethnic population of the Lower Mainland and Victoria is not being adequately served by the Canadian broadcasting system relative to English and French-speaking Canadians.

b) The Composition of the Ethnic Market

29. Not only is the Vancouver's ethnic population large in overall terms, but it is also very diverse in composition. This can be seen by simple reference to the size of the various ethnic communities in the Lower Mainland and Victoria relative to the total population of this market, as determined by Statistics Canada in its 1996 census data. As the chart below indicates, there are ten ethnic communities with a population in excess of 40,000 individuals, another six ethnic communities with a population greater than 20,000, and another nine ethnic communities with a population in excess of 10,000.

Top 25 Ethnocultural Groups, Vancouver and Victoria			
Ethnic Origin	Vancouver	Victoria	Total
Chinese	288800	10010	298810
German	186945	35120	222065
South Asian	125350	4625	129975

² Statistics Canada; www.statcan.ca:80/english/Pgdb/People/Population/demo28d.htm

Ukranian	73335	11855	85190
Dutch (Netherlands)	65665	12860	78525
Italian	64280	7200	71480
Polish	50035	8145	58180
Norwegian	39710	7790	47500
Filipino	42475	1745	44220
Swedish	34810	6465	41275
Russian	30420	4370	34790
Japanese	24300	1555	25855
Jewish	22225	2835	25060
Danish	19915	4365	24280
Spanish	20780	2375	23155
Hungarian (Magyar)	19500	3000	22500
Austrian	16840	2580	19420
Portuguese	15720	2945	18665
Korean	17505	425	17930
Vietnamese	16865	950	17815
Czech and Slovak	14520	2015	16535

Iranian	13200	555	13755
Finnish	11645	1960	13605
Greek	11235	1045	12280
Croatian	9120	1110	10230

30. By any objective analysis, these statistics make the case for the licensing of an over-the-air, ethnic television station in the extended Vancouver television market. First of all, as of 1996, over 1.8 million people lived in the greater Vancouver area alone. Almost 50% of these people — more than 800,000 — have an ethnic origin other than English, French, or aboriginal Canadian.

31. Some 35% of the total population — almost 634,000 in the Lower Mainland — are immigrants. Moreover, approximately 30% of this immigrant group — about 190,000 people — have arrived in Canada since 1991. Approximately 34% of the overall population in the Lower Mainland has a mother tongue other than English, French or an aboriginal language and about 24% of the total population speaks that mother language at home.

32. Overall, the Lower Mainland is now second only to Toronto as the most ethnically and linguistically diverse urban area in the country. Moreover, this ethnic population grew at an average annual rate of 9.5% during the ten year period of 1986 to 1996. During this period, the ethnic population in the Lower Mainland increased by 95%. This represents 466,000 additional people who were not in this market ten years ago. In this regard, if the current annual growth rate remains constant — and there is no reason to believe that it will not — the ethnic population in the Lower Mainland and Victoria could very well reach 1.8 million by the year 2006. This is only six years from now. This stunning increase represents a projected growth in these ethnic communities of 282% in the 20 year period between 1986 and 2006.

c) The Programming "Hole" in the Vancouver Market

33. In view of the positive benefits that the licensing of LM-TV would have made to the ethnic communities of the Lower Mainland and Victoria, the Commission's decision to deny CFMT's application makes no sense to us. The obvious demographic programming "hole" that needs to be filled in the Vancouver and Victoria television market is clearly ethnic-language programming. This "hole" can be readily seen if one compares the various over-the-air television stations that are currently available in the Toronto/Hamilton and Vancouver/Victoria television markets.

34. Television viewers in the Toronto/Hamilton and Vancouver/Victoria television markets currently have access to five local English-language television stations — the CBC and four private television stations. In other words, the combined Vancouver and Victoria market already has as many local English-language television stations as Toronto and Hamilton — an urban area that, with a total population of 4.85 million, has more than twice the total population of Vancouver and Victoria³. With the licensing of CHUM's application, there will soon be a sixth English-language over-the-air station serving the Victoria market and being retransmitted in Vancouver. As such, this combined market will soon have the largest number of English-language over-the-air television stations in Canada, with one more station than Toronto/Hamilton.

35. As the chart below shows, what is obviously missing is a service analogous to CFMT in the Lower Mainland. LM-TV would have provided such a service.

³ Statistics Canada; www.statcan.ca:80/english/Pgdb/People/Population/demo28f.htm

The Toronto/Hamilton and Vancouver/Victoria Television Markets		
	Toronto	Vancouver/Victoria
<u>CBC</u>	CBLT	CBUT
<u>SRC</u>	CBLFT	CBUFT
<u>English Private TV</u>	CFTO	CHAN
	Global	CKVU
	CHCH	CHEK
	CITY	CIVT
<u>Ethnic</u>	CFMT	Nothing

36. This same phenomenon occurs in Montreal. According to Statistics Canada data, as of 1996, Montreal had a French-speaking population of 2.25 million. This population currently supports four local over-the-air French-language television stations. These stations are as follows: CBFT-TV (SRC), CFJP-TV (TQS), CFMT-TV (TVA) and CIVM-TV (Télé-Québec). In reaching this number, we have included Télé-Québec which is not even a commercial television station but is, instead, the Quebec provincial educational television service.

37. This means that, even though the Lower Mainland's total population of 1.8 million is less than Montreal's French-language speaking population, it provides one more over-the-air station than does Montreal. With the licensing of CHUM's application, there will soon be six over-the-air stations in the Vancouver and Victoria television market, or two more than currently serve 2.25 million French-speaking residents of Montreal. However, unlike Vancouver, Montreal does provide an over-the-air ethnic television station to its ethnic communities. This comparison between Montreal's French-language television market and the combined Vancouver and Victoria English-language television market is set out in the chart at the top of the next page:

The Montreal and Vancouver/Victoria Television Markets		
	Montreal	Vancouver/Victoria
<u>SRC/CBC</u>	CBFT	CBUT
<u>French or English TV</u>	CFTM	CHAN
	CFJP	CHEK
	CIVM	CKVU
		CIVT
<u>Ethnic</u>	CJNT	Nothing

38. The end result is that, as "ethnic" as the Lower Mainland may be, it does not have access to the same level of local Canadian ethnic television programming as is available in either Toronto and Montreal. Rather than deal with this discrepancy and fill this clear programming hole through the licensing of LM-TV, the Commission has, instead, chosen to license yet another English-language station for this market.

39. The bottom line is that the combined Vancouver and Victoria television market will soon have more local English-language free, over-the-air television stations than the Toronto and Hamilton market even though, taken together, they are less than half the size. Similarly, the Vancouver and Victoria market will have more local English-language over-the-air television stations than Montreal has French-language stations, even though the French-speaking population of Montreal is greater than the total population (English, French and ethnic) of Vancouver and Victoria. It is little wonder that Decision CRTC 2000-219 was greeted by such disbelief by the ethnic communities of the Lower Mainland and Victoria. On a population to population analysis of the present situation in Vancouver, the ethnic communities are clearly not being treated fairly by the CRTC.

d) Demand for an Ethnic Television Station in Vancouver

40. Not only is an over-the-air ethnic television station needed in the Vancouver and Victoria television market but, equally important, there exists a strong demand within the various ethnic communities for such a service. In support of its application to the Commission, CFMT submitted both quantitative and qualitative research designed to assess the demand within these communities for over-the-air television programming delivered in their own languages. The results of this research were, not surprisingly, overwhelming in support of an ethnic station like LM-TV.

41. One of these research studies was an Environics public opinion poll. Environics is, of course, one of Canada's leading public opinion research firms. This research showed that the members of the local Chinese and South Asian ethnic communities in the Lower Mainland and Victoria are very interested in being able to obtain free, over-the-air local television programming in their own language. When asked if they would be interested in an over-the-air station that would provide local programming in their mother language, 9 out of 10 respondents indicated that they would be interested in watching such a television station.

42. Support for an over-the-air ethnic television station is strong across all age groups within the various ethnic communities. When the research specifically targeted members of the Chinese and South Asian communities who were 40 years of age or younger and who spoke English, Environics found that more than 8 out of 10 respondents thought it would be a good idea for there to be a new local television station that offers local programming in their native language.

43. Moreover, over 80% of these younger, English-speaking respondents said that they would personally be "likely to watch" the new over-the-air television station. These results speak for themselves and indicate beyond question that there is a very strong interest on the part of the ethnic communities in the Lower Mainland and Victoria for a service like that proposed by CFMT for LM-TV.

e) The Purchase of a Local Station?

44. In considering this petition, the argument could be made that if CFMT or any other party wants to operate an ethnic television station in the Vancouver/Victoria market, it can always go out and purchase an existing station. This is because, pursuant to the recent purchase of the television assets of WIC Western International Communications Ltd. by CanWest Global Communications Corp., Vancouver television station CKVU-TV is up for sale. As a result of the purchase of WIC's television assets, CanWest became the owner of two stations in the same market — CKVU-TV and BCTV — which is contrary to longstanding Commission policy. Choosing to keep BCTV, CanWest must now divest itself of CKVU-TV.

45. According to public statements made by Leonard Asper, CanWest's Chief Executive Officer, there has been an expression of interest by existing Canadian broadcasters in purchasing CKVU. While this is undoubtedly true, for its part, an applicant such as CFMT could hardly be expected to purchase an English-language station such as CKVU — which has historically operated as part of the Global Television Network — and convert it into an ethnic television station. Not only would this reduce the amount of programming diversity available in the Vancouver/Victoria television market, but it could not be justified on an economic basis.

46. Ethnic television stations, like CFMT in Toronto and CJNT in Montreal, operate according to a completely different financial model than conventional English or French-language stations in Canada. The Commission allows these ethnic television stations to earn revenues from the distribution of some English or French-language programming which is then used to cross-subsidize the costs of their ethnic-language programming. However, at least 60% of their program schedule must consist of ethnic programs.

47. These ethnic stations have significantly lower revenues than conventional stations and are priced by broadcasters accordingly. This being so, a conventional television station such as CKVU-TV would be sold at a price far in excess of the revenues that a station such as CFMT or CJNT could ever be expected to generate. This is a simple fact of the economics of the broadcasting industry in Canada. As such, if there is ever to be an over-the-air ethnic television station serving the combined Vancouver and Victoria television market, it has to be licensed by the Commission. The purchase and conversion of an existing station is not an option.

f) When Will the CRTC Ever License an Ethnic Service?

48. By denying CFMT's application, the Commission has clearly short-changed the ethnic communities of the Lower Mainland and Victoria, as well as undermined one of the most basic tenets of the Canadian broadcasting system — that the public airwaves should be available for all Canadians, regardless of their ethnic origin or the language that they speak. In so doing, the Commission has taken a decision which will have long lasting negative consequences on the Canadian broadcasting system and which will seriously affect the perception that ethnic-language Canadians have as to the role that they can play in this country and the actual commitment that the CRTC and the federal government have towards real cultural diversity in Canada. Actions always sound more loudly than words.

49. The ethnic communities in the Lower Mainland have been waiting patiently for years to have access to an over-the-air, ethnic-language television station dedicated to their needs and interests, capable of telling their stories and providing an accurate reflection of their presence in Canada. Such a station is very much needed in order to help the many members of these communities access the

information and services that they need to more actively participate in, and to better understand, Canadian society. Whether it is the coverage of local political events, or a discussion of government policy such as the example given of the landing fees issue referred to in paragraph 19 above, ethnic Canadians are entitled to derive some benefit from the Canadian broadcasting system. Furthermore, like other Canadians, they are entitled to programming diversity and choices.

50. Nonetheless, over the course of the last three years, the Commission has, on two separate occasions, in Decisions CRTC 97-39 and 2000-219, denied applications to establish such an ethnic television station in the Lower Mainland. In each of these proceedings, the applicant for the ethnic service has had to compete head-to-head with applications for more conventional — and lucrative — English-language television stations. Such an unequal competitive licensing process is, in itself, highly unfair. Unless Decision CRTC 2000-219 is referred back to the Commission for reconsideration, it may now be many more years before there is another opportunity for these ethnic communities to gain access to their own over-the-air ethnic television station.

51. It is difficult to believe that Vancouver — which, as noted above, is the second most ethnically diverse city in the country — does not have what both Toronto and Montreal have, an over-the-air ethnic television station serving the local ethnic communities. It is hardly surprising that members of our communities have begun to ask themselves why the Commission continues to deny them the same level of broadcasting services as made available in Toronto and Montreal.

2) Decision CRTC 2000-219 Contravenes Government and CRTC Policy

a) Federal Government Policies re Cultural Diversity

52. In deciding to deny CFMT's application, the Commission has not only ignored its own ethnic broadcasting policy, but seems at odds with the federal government's professed support for the notions of multiculturalism, pluralism and cultural diversity. The federal government's commitment to these principles was underscored in the Speech from the Throne on October 12, 1999 in which Her Excellency, the Right Honourable Adrienne Clarkson stated: "In a complex world, diverse approaches, skills and ideas are essential to building a higher quality of life ... Our diversity is a source of strength and creativity, making us modern and forward-looking". In his response to the Speech from the Throne the next day, October 13, the Prime Minister said:

We must also work together so that Canadians can have Canadian choices. To help connect Canadians to the diverse Canadian experience and to support and promote our rich Canadian talent ... That all Canadians have access to diverse Canadian stories, voices and images.

53. Similarly, in a speech made on the occasion of UNESCO's Intergovernmental Conference on Cultural Policies for Development held in Stockholm on March 31, 1998, the Minister of Canadian Heritage, the Honourable Sheila Copps, noted that: "Cultural diversity is the heart and soul of Canada. We are a microcosm of the world. We are the first example of what Canada's own Marshall McLuhan called the "Global Village". She then went on to declare that: "We want to encourage a cultural sector that is open to outside influences, while at the same time preserving a rich heritage and a society that is pluralistic in terms of both culture and language."

54. Again, in a speech at the President's Dinner of the European Union Audiovisual Conference held in Birmingham, England, on April 6, 1998, Minister Copps made the following statements:

The challenge for all societies is to shape the impact of technology for individual and collective advantage. The challenge is to ensure that mass media spawns diversity and that mass communications engenders distinctive forms of expression.

We are a country that is officially bilingual and legislated multicultural.

Canada is also the country most open to foreign cultures.

Cultural diversity is as important to human beings as biodiversity is for all species living on our planet.

Globalization is also about sharing the values, sharing ideas and recognizing that pluralism and cultural diversity are what make nations great and are what make civilizations great.

55. Following the UNESCO conference in Stockholm, Minister Copps hosted the International Meeting on Cultural Policy in Ottawa on June 29-30, 1998. At this International Meeting, Minister Copps stressed the importance of linguistic diversity by addressing the delegates in several ethnic languages. In a public document relating to the International Meeting issued by the Department of Canadian Heritage, it noted that: "The International Meeting will focus on three themes which link cultural policy objectives and the international agenda. The first, and over-riding theme deals with the need to promote cultural and linguistic diversity, both nationally and globally." Moreover, one of the discussion points for the International Meeting was summarized as "Best practices used to support cultural diversity, artistic creativity and heritage preservation."

56. As a result of initiatives taken by the Canadian government at the International Meeting held in Ottawa, the cultural ministers from various countries established the International Network on Cultural Policy. The activities to be undertaken by this Network in order to enhance global cultural diversity included "support of special projects, such as the new initiative by television broadcasters to promote a more diverse and varied range of global television programs."

57. On June 10, 1999, the Standing Committee on Canadian Heritage tabled its Report entitled *A Sense of Place, A Place of Being: The Evolving Role of the Federal Government in Support of Culture in Canada*. In the government's response to the Report in November, 1999, the Minister of Canadian Heritage set out the government's position as follows:

Our goal is clear: to ensure that Canadians have Canadian choices and to connect Canadians to the diverse Canadian experience. This means focusing on the creation of diverse Canadian content, and supporting creators, artists and innovators ... It means finding ways to build connections among Canadians, across our diverse communities, to connect Canadians to the world, and to engage young Canadians in all that we do.

58. In view of these public statements in support of multiculturalism and cultural diversity, members of Canada's many ethnic communities must now try to make some sense of Decision CRTC 2000-219. In other words, how can all of these public statements of government policy which laud cultural diversity be reconciled with a CRTC decision which runs directly contrary to the goals of diversity and a Canadian broadcasting system that is open to all Canadians?

59. The truth is that no sense can be made of Decision CRTC 2000-219 and its licensing of a second English-language television station for Victoria — and the sixth for the combined Vancouver/Victoria television market — while the clear needs of the estimated 800,000 residents of ethnic origin go completely unanswered. It is all the more difficult to understand in view of the many representatives of these ethnic communities who strongly supported CFMT's application at the CRTC's February 21 public hearing and the Environics research study which showed the overwhelming public demand for an ethnic television station serving Vancouver.

60. At some point, federal government policy must be translated into some tangible and concrete result. As the old saying goes: "Words are cheap". If the federal government truly believes in cultural diversity and is not merely paying lip service to the principle, Canadians of ethnic origin must be allowed to participate in the Canadian broadcasting system.

61. However, if, in a television market such as Vancouver, a federal institution such as the CRTC still cannot, when given its second opportunity in three years, bring itself to license an over-the-air television station that would serve the needs and interests of the ethnic communities, there can be no other conclusion than the government's actions fall far short of its words. In our view, Decision CRTC 2000-219, if not set aside by the Governor in Council and referred back to the Commission for reconsideration, will clearly demonstrate the enormous gulf that still lies between government policy and government action.

b) The Commission's Ethnic Broadcasting Policy

62. In addition, the Commission's decision to deny CFMT's application for LM-TV represents a clear derogation from the policy objectives set out in section 3 of the *Act*, as well as from the Commission's own ethnic broadcasting policy. Subparagraph 3(1)(d)(iii) of the *Act* makes it very clear that the Canadian broadcasting system should, through its programming, "serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including ... the multicultural and multiracial nature of Canadian society ..."

63. Since its original adoption of an ethnic broadcasting policy in 1985 pursuant to Public Notice CRTC 1985-139, the Commission has tried to create a regulatory framework by which ethnic-language radio and television services could be made available in Canada. The Commission's ethnic policy objectives have always made it clear that the Commission should support the continued growth of high quality ethnic Canadian programming, and encourage programming that fosters cross-cultural understanding and promotes the full participation of all people in Canadian society.

64. Following a series of public consultations in February, 1999 and the consideration of written submissions, the Commission recently revised its ethnic broadcasting policy further to Public Notice CRTC 1999-117 dated July 16, 1999. The purpose of these revisions was to provide more flexibility to the broadcasting industry, all while ensuring that the core objectives of the 1985 policy continued to be met. In its Public Notice, the Commission noted that — as the Environics research study in support of CFMT's application confirmed — there was a "high demand by Canadians for programming in a variety of languages." Furthermore, the Commission stated that it considered that the primary goal of its new policy was to ensure access to ethnic programming to the extent practicable.

65. According to a news release which accompanied the Public Notice, the Commission also indicated that its new policy would "ensure that the Canadian broadcasting system will continue to provide a range of quality ethnic programming to Canadians." In view of the Commission's decision denying the LM-TV application, we believe that it is very difficult to reconcile this purported objective of the Commission's ethnic broadcasting policy with the hard reality of the Commission's licensing decisions. Certainly, the Commission appears to have subverted its own supposed goal of promoting the cultural diversity of programming within the Canadian broadcasting system.

66. As already noted, Decision CRTC 2000-219 effectively denies the residents of the Lower Mainland and Victoria who are of ethnic origin access to high quality, local Canadian television programming that addresses their own unique culture and experiences. As such, the Decision prevents these people from participating fully in Canadian society. The fact of the matter is that they are consequently rendered "invisible" and cannot even see their own lives and images reflected on their television screens. The "reality" that they currently do see on local Vancouver and Victoria television stations belongs to someone else; someone else's life, someone else's culture.

67. We believe that the Decision undermines the goals of the Commission's ethnic broadcasting policy by hindering the continued growth of Canadian ethnic-language television programming. If the Commission cannot license an over-the-air ethnic television station in a market like Vancouver/Victoria which has over 800,000 potential viewers, where else in Canada can such a station be licensed? What is the purpose of the Commission's ethnic broadcasting policy if it can't be used to license such a station?

68. In our view, the public record of the February 21 hearing before the Commission shows that, of the competing applications, CFMT's application best met the policy objectives of subsection 3(1) of the *Broadcasting Act*, as well as the Commission's own ethnic broadcasting policy. Given this context, we

were simply shocked in reading the majority's decision in Decision CRTC 2000-219 to discover that these Commissioners did not address in any meaningful way the special needs of the ethnic communities in the Vancouver/Victoria television market or the Commission's longstanding policy to promote and support the growth of ethnic broadcasting in Canada.

3) Decision CRTC 2000-219 Denies Canadian Programming Choices

a) The LM-TV Application

69. CFMT applied to the Commission to establish a new, over-the-air, ethnic television station in Vancouver on May 15, 1998. The purpose of CFMT's application was to serve the increasingly large and diverse ethnic population in the Lower Mainland and Victoria and to respond directly to the demand by members of the various ethnic groups in this market for increased access to high quality Canadian television programming in a variety of ethnic languages.

70. CFMT has had a longstanding experience in the provision of over-the-air ethnic-language television programming. This is the result of its operation of CFMT-TV Toronto, Canada's first ethnic television station. CFMT-TV was licensed by the Commission in 1978 with a mandate to provide television programming to meet the distinct linguistic and cultural needs of the many diverse ethnic groups residing in Toronto. Subsequently, the Commission approved applications by CFMT to extend its programming service to ethnic audiences in south western and eastern Ontario. It was this experience that CFMT sought to apply to Vancouver with its most recent application to the CRTC. This is why the ethnic communities in this market so strongly support CFMT's application.

71. The filing of CFMT's application precipitated, in accordance with the Commission's normal practice, a call for competing applications pursuant to Public Notice CRTC 1999-101 dated June 23, 1999. In response to this Public Notice, the Commission received, in addition to CFMT's application, four other applications, including two from CHUM. CFMT's application, however, was the only application received by the Commission in response to Public Notice CRTC 1999-101 which proposed a free, over-the-air ethnic television service for the Lower Mainland and Victoria. CFMT's application clearly demonstrated the need that this television market had for such an over-the-air ethnic television station, as well as the strong demand that local television viewers had for ethnic-language programming.

72. LM-TV would have provided local, Canadian, multilingual television programming to these ethnic-language communities, thereby responding directly to their needs and interests. At least 50% of LM-TV's annual program schedule would have consisted of Canadian programming. Moreover, in the important "prime time" viewing period of 6 p.m. to midnight, 40% of LM-TV's schedule would have been Canadian programming — in other words, programming of direct relevance to the local Vancouver ethnic communities.

73. LM-TV's "prime ethnic" programming would have included television programming directed towards members of the two largest ethnocultural groups in the Lower Mainland and Victoria that have the greatest need for television programming in their mother tongue — the Chinese and the South Asian communities. Together these two communities represent a population base of over 450,000 people in this television market. In addition to various other programming initiatives, each of these communities would have received a local newscast and a national newscast for broadcast each week night in prime time. These newscasts would have provided members of these communities with detailed information on local, regional and national events that affect their lives.

74. LM-TV's "ethnic diversity" programming would then serve to complement its "prime ethnic" programming by catering to the needs and interests of members of the other many ethnic groups in the Vancouver extended television market. According to its application to the Commission, LM-TV would have provided programming in at least 15 different languages for members of no less than 18 different ethnocultural groups. This is the same number of groups served by CFMT in Toronto, a city with a larger ethnic population than Vancouver.

75. In all, LM-TV would have broadcast 75 hours of ethnic programming each week — 63 hours of which would have been Canadian ethnic programming. This programming would have given members of the local ethnic communities the information that they need to live better and more

productive lives. As noted by one of CFMT's panelists at the Commission's hearing, "Multilingual television helps people who feel isolated by language and culture. It gives people the tools and information that they need to participate more fully in Canadian society."¹

76. The licensing of LM-TV would have been of immeasurable importance to the ethnic communities of Vancouver. In addition to the local programming that LM-TV would have offered, its initiatives in support of the various communities would have been very useful in raising difficult social issues. In this regard, CFMT has produced a number of public service announcements in conjunction with the Department of Canadian Heritage for broadcast to CFMT's television audiences in Ontario. Important social issues such as violence against women have all been dealt with in a sensitive and informative manner. These initiatives could have also been undertaken in the Vancouver television market if only CFMT's application for LM-TV had been approved by the Commission.

77. Finally, it should be highlighted that the ethnic communities of the Lower Mainland never intended an ethnic television station like LM-TV to provide a shelter for them from the outside world. This station was intended to allow them to participate in Canadian society, not retreat from it. LM-TV would have been a "bridge", not a "moat". In addition, it would have provided them with the television choices that other Canadians enjoy — the choice to watch LM-TV, among other television options available in Vancouver.

b) Existing Ethnic Services in Vancouver

78. In its decision to deny CFMT's application, the majority of the Commission's hearing panel only gives passing reference to the existence of Vancouver's ethnic communities, simply noting that these communities should have access to additional local programming in view of the increasingly multicultural nature of the market. These Commissioners, however, then go on to state that "Vancouver residents currently have access to ethnic television from several other sources, including a local special programming channel as well as from specialty services."

79. In these circumstances, they concluded that the residents of Vancouver Island were relatively more underserved with regard to local programming, with only one television station — CHEK-TV. This appears to be the principal reason why they approved CHUM's application, instead of that of CFMT. The need for an additional over-the-air television station to serve Victoria was seen to be the immediate priority.

80. While we do not object to the Commission licensing of CHUM's application in respect of the Victoria television market, in our opinion, the idea that the estimated 800,000 members of the ethnic communities of the Lower Mainland are currently better served by the Canadian broadcasting system than the 339,000 residents of Victoria is plainly ludicrous. These Victoria residents can currently choose from five over-the-air local television stations — four from Vancouver and one from Victoria. With the licensing of CHUM's application, this number will rise to six. In addition, there is a wide range of other English-language Canadian programming services that they can receive, if they choose, by subscribing to a cable, DTH or MDS distribution system.

c) Ethnic Specialty Services

81. As for the many members of the ethnic communities in the Lower Mainland and Victoria, they do not have access to even one over-the-air television station serving their special programming needs. Unlike most other Canadians, turning on a television set does not bring them any over-the-air programming that addresses their culture or their language. These Canadians of ethnic origin do not have the same right as other Canadians to view free, over-the-air television programming even though their communities are large enough to justify the licensing of an ethnic television station.

82. If they want to receive an ethnic television service, members of these communities first have to subscribe to either a cable, DTH or MDS distribution system. Then, they must "buy through" a package of basic service offerings that they probably do not even want in order to subscribe to one of the

¹ CRTC Public Hearing, February 21, 2000, Volume 1, page 145

several discretionary, user-pay, ethnic specialty services licensed by the Commission. In other words, the Canadian broadcasting system that they can participate in is a "toll highway", not the public road that other Canadians take for granted.

83. The free over-the-air television stations that other Canadians can enjoy are simply not made available to them. Other Canadians can watch a variety of local television programming without being forced to subscribe (and pay for) cable, MDS or DTH services. This is not a choice that is available to members of the ethnic communities who, if they want to have access to television programming in their own language, must pay for it out of their own pockets. This is not fair. Would other Canadians settle for a broadcasting system that forces them to subscribe to discretionary specialty services even in circumstances in which their community is large enough to support a free, over-the-air service? Would the CRTC tell the citizens of Winnipeg or Halifax that they are not entitled to at least one local, English-language over-the-air television station? The answer to these questions is obvious.

84. As for the cost of the ethnic-language specialty services that are available in the Vancouver market, this could put access to these services beyond the reach of many ethnic households. This can be demonstrated by a few examples. In Vancouver, anyone wanting to receive either of the two Chinese-language specialty services licensed by the Commission — Fairchild and Talentvision — would first have to subscribe to Rogers Cablesystems' basic cable service (Channels 2-28) at a monthly cost of \$20.00. This is the case even if that person, knowing very little English or French, has absolutely no interest in receiving any of these basic cable channels. The additional monthly subscription cost to receive either Fairchild and Talentvision is then \$19.95 and \$9.95 respectively or, if the two services are bought together, \$25.00. Moreover, an analogue decoder must be rented at a cost of \$7.95 per month. This brings the minimum monthly cost payable by that subscriber to receive both services, exclusive of taxes, to \$53.00, or \$635.00 per year.

85. The other ethnic-language specialty services available in Vancouver are only distributed by Rogers Cablesystems on a digital basis. As such, subscribers wishing to receive these services also have to pay for the rental of the so-called digital "box" at a cost of \$10.95 per month. As such, a South Asian subscriber who wants to receive the CRTC-licensed Indian-language specialty service, ATN, must pay for the basic cable service (\$20.00), the rental of the digital box (\$10.95) and the subscription fee to ATN (\$14.95). This results in a minimum monthly cost to that subscriber, exclusive of taxes, of \$45.90, or \$550.80 per year, to receive one service. The same calculation can be made for the two other CRTC-licensed ethnic services available in Vancouver, the Greek-language service, Odyssey, at an additional monthly cost of \$14.95, and the Italian/Spanish service, Telelatino, at an additional monthly cost of \$9.95.

86. In a community with many immigrants who have yet to establish themselves in a financial sense in this country, not everyone can afford to pay for such premium priced television services. As such, there is an obvious "ability to pay" barrier to accessing these particular specialty services. In concluding that Vancouver's ethnic communities already have access to ethnic specialty services, the Commission is, in effect, suggesting that members of these communities should be required to go out and buy whatever discretionary ethnic services they can afford. This establishes, of course, a two-tiered broadcasting system in Canada — a basic, free over-the-air system for English and French-speaking Canadians, and a discretionary, user-pay system for Canadians of ethnic origin, even in circumstances in which their numbers warrant an over-the-air television station.

87. Finally, it should be remembered that these Canadian ethnic-language specialty services all have Canadian content requirements that are substantially less than those proposed by CFMT for LM-TV. To take the case of Talentvision, it must devote not less than 31.5% of its total program schedule to Canadian programs.² For their part, ATN has an annual Canadian content requirement of 17%³, while Odyssey has a requirement of 16%⁴. This can be compared to CFMT's commitment to an annual

² Decision CRTC 97-534

³ Decision CRTC 96-617

⁴ Decision CRTC 96-616

Canadian content level of 50% for LM-TV. It can therefore be seen that an over-the-air ethnic television station like LM-TV would provide Vancouver's ethnic communities with much more relevant local Canadian programming than any of these other services.

d) The Special Programming Channel

88. As for the Commission's reference to the "local special programming channel", this refers to the multicultural service offered to cable subscribers by Rogers Cablesystems. This service — known as the Rogers Multicultural Channel — is, in truth, a community channel offered in a variety of different ethnic languages. While the various ethnic communities are very grateful for the existence of this service, in terms of programming content and overall quality, it is not comparable in any way whatsoever to the commercial over-the-air television programming that other Canadians take for granted.

89. The Rogers Multicultural Channel in Vancouver is a volunteer-supported television service that is made available to the various ethnic communities on a "cable-access" basis. It is not, however, a commercial service and therefore does not have the financial resources that are necessary to provide the level of programming that other Canadians expect from the Canadian broadcasting system. As a simple community channel, it is not of a quality that can even come close to providing an accurate reflection of the various ethnic communities in the Lower Mainland or offering a level of television service that these communities require and demand from the Canadian broadcasting system. Because the local ethnic communities are portrayed to "outsiders" by means of a volunteer, non-professional staff, the communities are themselves often viewed as being inferior and second best. In this regard, this channel is only a stop-gap measure pending the licensing of a true over-the-air ethnic television station in the Lower Mainland.

90. By suggesting that Vancouver's ethnic community can be adequately served by this "local special programming channel", the Commission is again enforcing the notion of a two-tiered broadcasting system. One could quite legitimately ask why other Canadians should have access to a wide range of commercially supported over-the-air television stations while ethnic Canadians have to settle for what is, in essence, a not-for-profit community channel? Is this result fair or equitable in any way? Why should the 30% of the population of the Lower Mainland and Victoria that is of ethnic origin have to accept the provision of a technically inferior, special programming channel when their numbers clearly warrant a commercial over-the-air television station that will have the necessary financial resources to serve them properly?

91. In essence, the majority in Decision CRTC 2000-219 believes that a community that already has access to one local over-the-air station in Victoria, and four addition stations in Vancouver, is worse off than a much larger community that does not have access to any over-the-air television stations. Such a conclusion defies credulity and shows just how far out of touch the majority of the Commission's hearing panel was with respect to the true programming needs of the Vancouver and Victoria television market.

4) The Views of the Dissenting Commissioners

92. In concluding that the Commission committed a very serious error in licensing CHUM's application at the expense of the CFMT application, we take some comfort in the strongly worded dissenting opinions expressed by Commissioners Cindy Grauer and Barbara Cram. In their written decisions, both of these CRTC Commissioners indicated that they would have approved CFMT's application.

a) The Problems with the CHUM Application

93. In the view of Commissioners Grauer and Cram, the licence issued by the Commission for the Vancouver/Victoria market should not have gone to CHUM. There were a number of reasons for this. These included the fact that the advertising market in Victoria would not be able to support a new locally oriented television station, as well as the concern that these Commissioners had as to the financial impact that the new CHUM station could have on the existing station in Victoria — CHEK-TV. In these circumstances, the two dissenting Commissioners were worried that competitive pressures could force both CHEK and the new CHUM station to shift their programming focus from Victoria to the much larger and more lucrative Vancouver market.

94. In addition to these concerns, Commissioners Grauer and Cram noted in their dissenting opinions that CHUM had shifted proposed benefits between its Vancouver and Victoria applications at the Commission's February 21 hearing. Although CHUM had very clearly stated that its two applications were "stand alone" applications and, as such, were designed to be considered independently of one another, at the hearing CHUM engaged in what can only be described as a "shell game" with the Commission, moving benefits from the Vancouver application to that of Victoria. In other words, the Victoria application that CHUM filed with the Commission in response to Public Notice CRTC 1999-101 was not the application considered at the hearing.

95. Putting aside the prejudice that this caused the other applicants — including CFMT — who were put in the position of not knowing what they were competing against, as the two dissenting Commissioners have pointed out, the Commission has no idea as to what kind of a station it has just licensed from CHUM. As noted by Commissioner Grauer in her written opinion: "CHUM made, however, over the course of the hearing, changes to the Victoria application, some of which, as they admitted, would clearly affect the business plan ... It is difficult to know just how their business plan is affected and what the Commission has licensed." This view was echoed by Commissioner Cram who, in asking "What exactly has the majority licensed?", wrote:

Notwithstanding what the first CHUM panel stated, I do not consider that CHUM has filed these applications as stand-alone. As a result, at the public hearing CHUM made a change to its application for Victoria to increase its spending commitment to \$12 million, in addition to the other changes referred to. I would not have accepted it.

96. It is hardly surprising that Commissioner Cram would not have accepted this change in view of the fact that section 8 of the *CRTC Rules of Procedure* normally prevents an applicant from amending or otherwise varying an application after it has been "gazetted". Nonetheless, at the hearing, to the astonishment of the other competing applicants, CHUM made several fundamental changes to its Victoria application. These changes went to the very heart of its application.

97. One change made by CHUM was, as referred to by Commissioner Cram above, intended to increase its spending commitment to \$12 million for the Victoria application, as well as to move some of its proposed programming from the Vancouver application to the Victoria station. As Commissioner Cram noted in her written opinion, without this \$12 million dollar change, CHUM's application would have been completely untenable.

98. In our view, it was unquestionably unfair that the majority in Decision CRTC 2000-219 should have permitted CHUM to amend its Victoria application in this way in the context of a competitive licensing process. The CRTC's public hearings are not meant to be run as some kind of regulatory "flea market" in which applicants bid against one another in an effort to win a broadcasting licence. Some elementary rules of procedural fairness should govern the conduct of CRTC proceedings. By allowing CHUM's amendments to its Victoria application at the hearing stage, the Commission seriously compromised the integrity of its own licensing process.

b) The CFMT Application

99. As noted by Commissioners Grauer and Cram, while the majority in Decision CRTC 2000-219 recognized that "Vancouver's ethnic communities should have access to additional local programming, especially given the increasingly multicultural nature of the market", the majority then went on to decide that licensing a second station in Victoria should take precedence over the licensing of LM-TV. Disagreeing with the view of the majority that the licensing of a second English-language station for Victoria's 339,000 residents should take precedence "over 750,000 members of Vancouver's multicultural communities who have no free over-the-air ethnic service", Commissioner Grauer wrote as follows:

This licensing decision is a bitter development for the large growing multicultural community in what is arguably Canada's most culturally diverse city. The Commission has missed an important

opportunity to signal to this vibrant and dynamic community that it recognizes the social and cultural transformation that has taken place on Canada's West Coast. A local ethnic service would have added program diversity, made a significant contribution to the goals of the *Broadcasting Act* and demonstrated the Commission's commitment to the values articulated in the new ethnic policy.

100. Similarly, Commissioner Cram strongly endorsed CFMT's application for LM-TV. In her written dissenting opinion, she gave five specific reasons why she would have licensed LM-TV in preference to CHUM's application for Victoria. These included the following:

- the expected rate of growth of Vancouver's ethnic population through the annual immigration into the Vancouver area, plus the normal growth rate. As such, the demand for an ethnic station will increase quickly.
- the ethnic fact is far more visible in Vancouver than in Toronto since the two cities have, according to Statistics Canada, approximately the same number in ethnic population, but due to Vancouver's lower total population, the ethnic mosaic in Vancouver is more apparent.
- the fact that the ethnicity of Vancouver is an accepted fact with many politicians and other prominent professionals coming from the various ethnic communities.
- the demonstrated demand for ethnic broadcasting services for the foreseeable future.
- the fact that the Vancouver area is home to the largest ethnic population in Canada not being served by an off-air television ethnic station.

101. In her dissenting opinion, Commissioner Cram also made the point that it was very difficult for the Commission to assess an application for an ethnic television station in the context to a public process that is also considering conventional, English-language applications. With respect to issues such as programming content the two kinds of applications invite a very real "apples and oranges" comparison which is, in our view, unfair to CFMT. As recognized by Commissioner Cram, "we cannot assess ethnic applications on the same criteria, otherwise there would be no need to have an ethnic broadcasting policy."

102. Commissioner Cram concluded her remarks by writing: "If the demand in this market were not seen as sufficient, this would mean that there would never be another ethnic television station in Canada. Clearly the Ethnic Broadcasting policy contemplated otherwise ... With the greatest respect to the majority, I would have licensed CFMT."

103. It goes without saying, of course, that we agree completely with the views expressed by Commissioners Grauer and Cram. These two Commissioners were the only ones on the Commission's five member panel who come from Western Canada — Commissioner Grauer from Vancouver and Commissioner Cram from Regina — with the result that they were clearly more knowledgeable about the needs of the Vancouver/Victoria television market than the other panel members.

104. In this particular case, they were correct in their analysis of the deficiencies of CHUM's application and the fundamental unfairness of allowing CHUM to move benefits from its Vancouver proposal to that of Victoria at the February 21 public hearing. They also identified the CFMT application as the one that would serve the greater public interest by providing a free over-the-air television service to the multicultural residents of the Lower Mainland and Victoria. The dissenting views expressed by Commissioners Grauer and Cram are cogently stated and very persuasive and, in our view, highlight the significant licensing error that has been made by the majority in Decision CRTC 2000-219.

c) The U.S. Threat

105. In denying CFMT's application, the majority also chose to ignore the threat posed by a new U.S. television station located in Bellingham, Washington which is soon expected to broadcast ethnic

programming into the Lower Mainland during the prime time, evening broadcast period. When this station goes "on air", it will specifically target Vancouver's ethnic population but, as a U.S. station, will obviously have no Canadian content requirements or be required to make any other contribution whatsoever to the Canadian broadcasting system. Advertising revenues that could have been earned by LM-TV and spent in Canada will now, instead, go to this new U.S. station.

106. Let there be no mistake, this new U.S. station is not designed to serve Bellingham, a small town just across the border from Vancouver with, in the words of Commissioner Grauer, "no discernible multicultural population." Like KVOS-TV Bellingham, which has historically served Vancouver's English-language television market, this new station will divert Canadian television viewers and Canadian advertising budgets southwards to be lost forever to the Canadian broadcasting system.

107. Unlike the majority in Decision CRTC 2000-219, the owners of this U.S. station are fully capable of recognizing the programming "hole" that exists in the Vancouver television market and have taken steps to fill it. This U.S. station will undoubtedly operate quite profitably, all at the expense of the Canadian broadcasting system. This turn of events is certainly not in the public interest. Again, in the words of Commissioner Grauer in her dissenting opinion:

The Commission has missed an opportunity to license a Canadian station to serve Vancouver's large and growing multicultural community. Today's decision will clear the way for revenues and audiences that could have accrued to a Canadian station and benefit the Canadian broadcasting system to flow south of the border and to allow another U.S. border station to establish a foothold in this market.

Conclusion

a) Setting Aside Decision CRTC 2000-219

108. In this context, we submit that the CRTC's majority decision was a mistake and that it should be set aside and returned to the Commission for reconsideration pursuant to subsection 28(1) of the *Broadcasting Act*. We believe that in issuing Decision CRTC 2000-219, the Commission disregarded the policy objectives of subsection 3(1) of the *Act*, its own ethnic broadcasting policy, as well as the federal government's long standing public commitments to cultural diversity and pluralism.

109. There is ample evidence that Vancouver needs an over-the-air ethnic television station similar to those that already exist in Toronto and Montreal. To the extent that Decision CRTC 2000-219 denied the licensing of an over-the-air ethnic television station in Vancouver, it is wrongly decided and should not be allowed to stand.

110. We hope that we have demonstrated in this petition that Decision CRTC 2000-216 will have lasting negative repercussions on the many men, women and children who reside in the Lower Mainland and Victoria and whose language and cultural background is other than English, French or aboriginal Canadian. It is high time that these Canadians were finally allowed to see their reality reflected on the television screens of this country and are allowed to participate fully in Canadian society.

b) The Terms of the Reference Back to the Commission

111. In light of these considerations, we respectfully submit that it would be in the public interest for the Governor in Council to refer Decision CRTC 2000-216 back to the Commission for reconsideration on the basis of the existing public record of the Commission's February 21, 2000 hearing. In so doing, we are of the view that the Governor in Council should stress to the Commission, pursuant to subsection 28(2), that, when reconsidering these competitive applications, it should have particular regard to the manner in which its licensing decision will contribute to the attainment of subparagraph 3(1)(d)(iii) of the *Act*. This subparagraph makes it very clear that the Canadian broadcasting system should, through its programming, "serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including ... the multicultural and multiracial nature of Canadian society ..."

112. In addition, the Governor in Council should direct the Commission to consider the ability of the Vancouver extended television market to support the newly licensed CHUM station and LM-TV. We would hope that, upon reconsideration of Decision CRTC 2000-219 in light of the Canadian broadcasting policy set out in subsection 3(1), the Commission will recognize that the new CHUM station and LM-TV can both be responsibly introduced into the Vancouver/Victoria market.

113. Nonetheless, if, following such a reconsideration, the Commission confirms its earlier view that only one new over-the-air television station can be licensed, we submit that the requirements of subsection 3(1) dictate that an ethnic television station should take precedence over the station proposed by CHUM for Victoria. It must also be remembered that, pursuant to Decisions CRTC 97-39 and 2000-219, the Commission has, in the relatively short period between 1997 and 2000, licensed two new conventional television stations to serve the same English-language demographic audience in the same television market. In these circumstances, the Commission should, pursuant to subsection 28(3), rescind the issuance of the broadcasting licence to CHUM and issue a broadcasting licence to CFMT on terms and conditions to be established by the Commission.

c) Service of Petition on CHUM, CFMT and Craig

114. As a final matter, we would like to state for the record that we take no pleasure in bringing this petition to the Governor in Council. The only reason that we have brought this petition is that the licensing of CHUM's application by the Commission has denied the ethnic Canadians that we represent the opportunity to have an over-the-air television station which would serve their needs and interests in the Vancouver/Victoria television market. We deeply regret having to take this action but we have no other alternative.

115. We would also like to note that, pursuant to subsection 29(1) of the *Broadcasting Act*, we have filed a copy of this petition with the Secretary General of the Commission. Although not required by law to do so, we have also sent a copy of this petition to CHUM, CFMT and Craig. We have done this as a courtesy and in the interests of an open and public appeal process.

116. We expect, of course, that, upon receipt of this petition, CHUM, CFMT and Craig (and perhaps other parties) may wish to file a Reply with the Governor in Council. This is entirely appropriate. We would ask, however, that if such a Reply is sent, that a copy be forwarded to the attention of the Petitioners to our legal counsel, Ms. Mobina Jaffer, at the law firm of Dohm & Jaffer in Vancouver. We believe that any elementary notion of fairness requires that any Reply that is sent to the Governor in Council in relation to this matter should also be sent to us.

ALL OF WHICH is respectfully submitted this 14th day of August, 2000.

Decision CRTC 2000-219

Ottawa, 6 July 2000

CHUM Limited
Victoria, British Columbia
– 199911970

CHUM Limited
Vancouver, British
Columbia
– 199911946

CFMT-TV, a division of
Rogers Broadcasting
Limited
Vancouver, British
Columbia
– 199911912

Craig Broadcast Systems
Inc., on behalf of a
company to be incorporated
Victoria, British Columbia
– 199911905

*21 February 2000 Public
Hearing
in Vancouver*

New television station on Vancouver Island

*The Commission approves an
application by CHUM Limited
for a new television station in
Victoria, as well as for a
transmitter to rebroadcast the
new station's signal in
Vancouver. It denies the
competing applications for*

*new commercial television
stations to serve the
Vancouver/Victoria market
from the other parties listed
above. The Commission
considers that the new station
will provide an attractive
service that will include a
significant amount of local
programming of particular
interest to residents of
Vancouver Island.*

1. The Commission, by majority vote, approves the application by CHUM Limited (CHUM) for a broadcasting licence for an English-language television programming undertaking at Victoria, on channel 53 with an effective radiated power of 12,000 watts.
2. The Commission further, by majority vote, approves CHUM's application for a transmitter at Vancouver on channel 17 with an effective radiated power of 44,000 watts to rebroadcast the signal of the new Victoria station.
3. Subject to the requirements of this decision, the Commission will issue a licence expiring 31 August 2004. This licence will be subject to the conditions specified in this decision and in the licence to be issued.

4. The Commission considers that a four-year term is appropriate in light of changes occurring in the Vancouver/Victoria television market. This shorter term will allow the Commission to discuss, at an earlier date, whether or not CHUM's commitments are commensurate with the privilege granted once the market has had an opportunity to adjust to the new stations that have been licensed, both today and in 1997, as well as to any change of ownership that occurs as a result of Decision CRTC 2000-221 issued today.

5. In that decision the Commission, among other things, approves applications that will result in the transfer of effective control to CanWest Global Communications Corp. of CHAN-TV Vancouver and CHEK-TV Victoria. These stations had previously been owned by Western International Communications (WIC). At the same time, the Commission has required CanWest Global to adhere to its commitment to sell its current indirect ownership of CKVU-TV Vancouver to a third party. The Commission has taken the changing nature of the market and the resulting uncertainties into account in evaluating the reasonableness of the applicants' revenue forecasts, particularly as they relate to the ability of the applicants to fulfill the programming commitments

that they have made on the basis of these forecasts.

6. The licence will only be issued and effective when the undertaking is ready to begin operation. When the licensee has completed construction and is prepared to commence operation, it must advise the Commission in writing. If the undertaking is not constructed and ready to operate within 12 months of today's date, extensions to this time frame may be granted, provided that the licensee applies in writing to the Commission before the 12-month period or any extension of that period expires.

Background

The public process

7. At the 21 February 2000 public hearing in Vancouver, the Commission considered five applications for new television stations to serve the Vancouver/Victoria extended market area.
8. The Commission initiated the process for dealing with these applications after it received an application from CFMT-TV, a division of Rogers Broadcasting Ltd. (CFMT), for a new television station in Vancouver. Consistent with its practice, the Commission issued Public Notice CRTC 1999-101 calling for applications from other parties wishing to obtain broadcasting licences to provide television

service to the
Vancouver/Victoria area.

The applications

9. The Commission received five applications to establish new television services, including the application from CFMT. One applicant proposed to serve the Fraser Valley Region. Two applications were to establish stations that would be located in Victoria, and two applications were to establish stations located in Vancouver.

Fraser Valley Region

10. Trinity Television Inc. (Trinity), a charitable not-for-profit corporation, proposed to establish an English-language religious television programming undertaking to serve the Fraser Valley Region. The Commission approved, by majority vote, Trinity's application in Decision CRTC 2000-218 issued today.

Vancouver

11. CHUM proposed to establish a Vancouver station that would be known as CITT-TV. Programming would be based on local news and movies – an approach similar to that used by CITY-TV in Toronto. CHUM indicated that the proposed station would target an urban and ethnically mixed audience that it considered was not currently well served.

12. CFMT proposed to establish an ethnic television station that would be known as LM-TV. At least 60% of all programming would be ethnic programming, and the station would serve a minimum of 15 language groups and at least 18 distinct ethnic groups. The applicant further proposed to establish a transmitter for the new station in Victoria.

Victoria

13. CHUM proposed to establish a station that would be known as CIVI-TV. Its programming would emphasize local news and information. CHUM indicated that it would concentrate its commitments related to under-represented categories of Canadian programming on dramatic series, music/variety programs and documentaries. CHUM further proposed to establish a transmitter for the new station in Vancouver.
14. Craig Broadcast Systems Inc., on behalf of a company to be incorporated, (Craig) proposed a station that would be known as "A-Channel on the Island." The station would be patterned on Craig's A-channel stations in Alberta and Manitoba and would be heavily oriented to providing a strong local service. Craig further proposed to establish a transmitter for the new station in Campbell River.

15. The Commission notes that the two applicants proposed to use the same channel in Victoria. They were, therefore, mutually exclusive on a technical basis.

The Vancouver/Victoria television market

16. The Vancouver extended television market, which also includes Victoria, is currently served by four commercial stations, as well as by the CBC station, CBUT. As mentioned previously, in Decision CRTC 2000-221 issued today, the Commission approved applications that will result in control of CHAN-TV Vancouver and CHEK-TV Victoria passing to CanWest Global. However, the same decision requires CanWest Global to sell its current ownership interest in CKVU-TV. Finally, CTV Television Inc. operates CIVT-TV. This station was licensed by the Commission in Decision CRTC 97-39 dated 31 January 1997. As well, KVOS-TV plays a unique role in the market. KVOS-TV, an American-owned station is located in Bellingham, Washington, but orients its programming and sales activities to the Vancouver market.
17. There was considerable discussion at the hearing concerning the ability of the Vancouver/Victoria market to sustain the introduction of new television stations. The Commission is concerned that

new stations be introduced into a market in a manner that does not compromise the ability of existing stations to fulfil the programming commitments that they have made. As indicated in Decision CRTC 2000-218, the Commission concluded that the introduction of the new not-for-profit religious station proposed by Trinity would have little impact on the revenues of commercial broadcasters while bringing a new voice to the market.

18. The incumbent Vancouver stations, however, expressed concerns about the impact that introduction of new commercial stations would have on their own operations. They noted that a new station, CIVT-TV, had been introduced to the market recently, and that total television advertising revenues for the Vancouver market had actually declined in 1999. These parties considered that this decline in revenues represented the beginning of a trend, as national advertisers begin to place more emphasis on buying time on specialty services at the expense of conventional stations. In light of their predictions of relatively flat revenue growth in the market, the incumbent stations considered that most of the revenue obtained by new stations would come at their expense.

19. The applicants, on the other hand, generally considered that the 1999 decline in advertising revenues was a short-term phenomenon, caused in part by a shift from a diary to a metered method of audience measurement. They predicted that the market would rebound, and would enjoy modest growth in advertising revenues in upcoming years. They also considered that the introduction of a new station or stations would, in and of itself, increase the amount of advertising purchased in the market. The applicants further predicted that the stations they proposed would repatriate between five and six million dollars of advertising revenues that currently flow from the Vancouver market to KVOS-TV in Bellingham.
20. Craig, however, considered that the number of new stations that the market could sustain was limited, and indicated that it would not accept a licence if the Commission licensed another commercial station in addition to the one that it proposed.
21. The Commission agrees that introduction of a new station tends to increase the amount of advertising revenue to some extent. It notes that, when CIVT-TV was introduced, the amount of advertising revenue flowing to Vancouver stations increased by about 6%. As well, the Commission notes the applicants' projections that they would repatriate between five and six million dollars from KVOS-TV. On the other hand, the Commission considers that the market is still adjusting to the introduction of CIVT-TV, and notes that there was little growth in advertising revenues from September 1999 to February 2000, according to figures filed at the hearing.
22. The Commission is convinced that advertisers will continue to view conventional television as an effective means of reaching a mass audience. It notes that viewing to conventional television stations still remains at a level that is significantly higher than that to Canadian specialty services. It also notes that, while television national advertising revenues declined between 1998 and 1999 in Vancouver, such revenues increased in Edmonton, Calgary, Toronto and Montréal. Furthermore, the overall profitability of the Vancouver television market, measured at the level of profits before interest and taxes, is currently well above the Canadian average.
23. After considering the relevant factors, the Commission has concluded that, in addition to the not-for-profit religious station proposed by Trinity, the Vancouver/Victoria market can support the addition of only one commercial television station at this time.

Location of the station

transmitting site and have had similar coverage patterns.

- | | |
|--|--|
| <p>24. In light of its decision to license only one new commercial station in Vancouver/Victoria, the Commission next considered whether it should license a station based on the mainland or on Vancouver Island.</p> <p>25. Vancouver Island is currently served by only one station with studios located there. That station is CHEK-TV. The issue of additional service for Victoria was addressed in Decision CRTC 97-39 in which the Commission licensed CIVT-TV Vancouver. Among the applications denied in that decision was one by CanWest to establish a station in Victoria with a second transmitter at Courtney.</p> <p>26. In that decision, the Commission acknowledged that there was a clear demand among Vancouver Island residents for a new local television service. It also agreed that there was a need for such a service, particularly in the absence of an English-language CBC television station to serve the provincial capital.</p> <p>27. The Commission, however, did not consider that approval of the CanWest application was appropriate. Both CanWest's existing station CKVU-TV, as well as the proposed station, would have operated from the same</p> | <p>28. Further, under CanWest's proposal, more than 50% of the Victoria station's schedule would have consisted of programs also included within CKVU-TV's schedule, but aired at different times. The Commission therefore considered that CanWest's proposed station would have added little by way of diversity to what was already available in the Vancouver/Victoria market, apart from the proposed local programming directed to Vancouver Island viewers. Further, unlike the other applicants, CanWest would not have represented a new television voice in the market.</p> <p>29. Both the Craig application and CHUM's Victoria application considered at this public hearing, proposed services strongly oriented to Vancouver Island, and included initiatives to support productions by island producers. Licensing either would also provide a new television voice in the Vancouver/Victoria market.</p> <p>30. On the other hand, the two applicants for stations with studios in Vancouver, CFMT and the CHUM Vancouver application, would also provide new voices in the market and both would offer significant levels of locally</p> |
|--|--|

oriented ethnic programming. CFMT's application would provide Vancouver with an ethnic over-the-air television station, something currently not available in the market. The CHUM application would also provide significant amounts of ethnic programming, and a new style of television for the market based on the CITY-TV model.

31. The Commission shares the views of those who consider that Vancouver's ethnic communities should have access to additional local programming, especially given the increasingly multicultural nature of the market. The Commission notes, however, that Vancouver residents currently have access to ethnic television programming from several other sources, including a local special programming channel as well as from specialty services. On the other hand, as indicated in Decision CRTC 97-39, the Commission is convinced that Vancouver Island remains seriously underserved with regard to local programming, with only one television station located there. This has been a long-standing concern both to the Commission and to residents of the island given the diverse nature of the island's population and Victoria's status as the provincial capital. Given its decision to license only one station, the Commission considers that the need for an

additional television service to serve Vancouver Island should take priority at this time.

Assessment of island applications

32. The Commission considers that both Craig and CHUM presented very strong applications from the viewpoint of providing original local programming. Both proposals included provisions for the broadcast of extensive local news, as well as local programming falling into other categories.
33. CHUM proposed to broadcast 26 hours per week of original local programming, including 19.5 hours per week of local news. Craig proposed 24 hours of original local programming per week, plus contributions by the Victoria station to programming on Craig's television system. Craig's programming would include 15.5 hours each week of local news.
34. Craig proposed 8.5 hours of local non-news programming each week, with 3.5 hours of this programming aired in peak time. CHUM proposed 7.5 hours of local non-news programming, including 2 hours broadcast in peak time.

35. In addition to its strong commitments for local programming which were set out in a detailed programming schedule, and significant commitments to independent production, which are set out later in this document, the Commission considers that licensing CHUM will bring a number of other benefits.
36. Public Notice CRTC 1999-97 *Building on success – A policy framework for Canadian television* (the television policy) stresses the importance of strong players in the television industry if its regulatory objectives with regard to Canadian content are to be met in the medium and long term in a rapidly changing broadcasting landscape. With a station in the Vancouver/Victoria market, the potential reach of CHUM television stations will increase from about 48% to over 60% of English-speaking Canadians. If Craig were successful, its potential reach would increase from about 17% to about 30% of Canadians. The new station will therefore increase CHUM's ability to provide a stronger additional private television voice for Canadians than would be the case if the Craig application were approved. As well, as discussed later, CHUM proposed to increase the level of priority programs on all of its "NewNet" stations in Ontario, if this application were approved. This increased amount of priority programming would be available to more Canadians than would be the case if Craig implemented its commitments to increase the level of priority programming on its existing stations if the Commission approved its Victoria application.
37. As well, synergies between the new station and CHUM's specialty channels, as well its international operations, will help make the voices of British Columbia residents available to all Canadians, and to those living beyond our borders.
38. The Commission further notes that CHUM's television stations have a strong history of reflecting their local communities in innovative ways, as well as reflecting Canada's cultural diversity both on and off the air.
39. On a local level, the Commission considers that CHUM is better positioned to repatriate viewership from KVOS-TV Bellingham, since CHUM holds the Canadian rights to several programs that KVOS-TV now broadcasts. At the hearing, CHUM noted that its programming schedule included programs that it already owned or for which it could readily obtain Victoria and island rights. It therefore considered that its activities

related to acquiring programming would not further drive up the costs of acquiring U.S. programming in the market.

40. The Commission has concluded that approving CHUM's application is in the public interest as it would serve the need of viewers on Vancouver Island for a new local television service and best promote the objectives set out in the Commission's television policy and in the *Broadcasting Act*. The new station will thus serve the needs of the local community, as well as fulfil national goals.

The new station

Local programming

41. The new station will provide an additional local service for those living in Victoria and throughout Vancouver Island. Programming will include extensive local news coverage, including four newscasts on weekdays, and two on Saturdays and Sundays. The Commission notes the licensee's commitment that local newscasts will feature staff specialists who will provide regular segments on local arts and culture, sport and recreation, and the ecology and environment. The Commission further notes that the licensee plans to address demands for coverage of events in the northern part of

Vancouver Island through the establishment of a bureau in Nanaimo. This bureau will be staffed by a videographer, and will include a *Speaker's Corner*. In order to ensure even broader coverage of the island, CHUM will distribute digital handycams to stringers in outlying areas. The Commission expects the licensee to fulfil all of these commitments.

42. The new station will also broadcast local programs that showcase local talent and provide coverage of local events. One example is *Island Weekend*, a local magazine program that will reflect the attitudes, activities and ambitions of residents across Vancouver Island.

43. The licensee has made a commitment to broadcast a minimum of **26 hours** of original local programming each broadcast week. This programming will include a minimum of 19.5 hours of local news, and at least 6.5 hours of other categories of local programming. As well, the licensee has made a commitment to broadcast a minimum of two hours of original local programming in peak time (7 p.m. to 11 p.m.) during each week of the licence term. The Commission requires the licensee to fulfil each of these commitments.

44. The Commission further requires the licensee to fulfil its commitment to broadcast a weekly half-hour local program in peak time that will focus on aboriginal issues in British Columbia.

Priority programming

45. The Commission's new policy for television places emphasis on the broadcast of Canadian programming in the priority categories. Priority programming includes drama, music and dance, variety, long-form documentaries, regionally produced programs in all categories other than news and information and sports, as well as Canadian entertainment magazine programs.

46. Under the television policy, major television groups that may potentially reach 70% or more of the anglophone population must broadcast at least eight hours of priority programming per week. With the addition of this new station, CHUM television will have a potential reach of about 60% of anglophones.

47. Nevertheless, the licensee has made a commitment to broadcast, at a minimum, in each broadcast year, an average of eight hours per week of Canadian programs in the priority program categories between 7 p.m. and 11 p.m. The Commission is imposing a condition of licence, set out in the appendix to this decision, that requires CHUM to fulfil this commitment.

48. The Commission also notes the licensee's commitment to provide eight hours per week of programming from the priority categories on all of its "NewNet" stations in Ontario, if the application for a new station in Victoria is approved. The licensee is therefore required to submit applications to amend conditions of licence relating to priority programming to reflect this commitment, within a time frame that will permit the revised commitment to take effect coincident with the launch of the new Victoria station. Such applications should relate to the following stations: CHRO-TV Pembroke, CFPL-TV London, CKNX-TV Wingham, CKVR-TV Barrie, and CHWI-TV Wheatley.

Independent production from British Columbia

49. At the hearing, the licensee made a commitment to Canadian programming based on a scenario where the Commission denied its proposed station for Vancouver, while approving the proposed station in Victoria. CHUM stated:

In Vancouver, you will recall we have an \$18 million commitment to feature film, plus the \$6.7 million commitment to the dramatic serial for a total of \$24.7 million.

In looking at the revenue that we would generate on the Victoria alone scenario, we are comfortable with bringing some of those commitments over to the Victoria alone scenario. The commitment we would be prepared to make is a \$12 million special Canadian programming commitment on the Victoria alone scenario.

50. The applicant further indicated that at least half of the \$12 million would be spent on programs that fall within the definition of regional programming.

51. The Commission notes that CHUM's proposed expenditure related to feature films, which amounted to about \$18 million of CHUM's total \$24.7 million commitment for its proposed Vancouver station, was clearly designated for independent producers in British Columbia.

52. The Commission expects the licensee to fulfill, as a minimum, its special commitment to spend \$12 million on Canadian programming during the first seven years of operation of the new Victoria station. The Commission further expects that all of this money will be spent on independent production from British Columbia, with at least half of the total going to independent producers based on Vancouver Island.

53. Over the four-year licence term, the Commission requires the licensee to spend \$7 million on independent production, the amount derived by pro-rating the \$12 million over a four-year period. The fulfillment of the remaining portion of the \$12 million commitment will be examined in the context of the renewal of the Victoria

station's licence.

Other matters

Cultural diversity

54. In its television policy, the Commission expressed its confidence that the Canadian broadcasting system could "better reflect the presence of minority groups in Canadian society, and...portray them accurately and fairly."

55. The Commission notes the licensee's commitment to comply with its corporate statement *Cultural diversity best practices* in a manner appropriate for Vancouver Island. It further notes CHUM's commitment to convene and televise a National Ethnic Forum within one year of the date that the station begins operation. This forum will explore how the media can better reflect Canada's cultural diversity.

Employment equity

56. The Commission notes that this licensee is subject to the *Employment Equity Act* that came into effect on 24 October 1996, and therefore files reports concerning employment equity with Human Resources Development Canada.

Service to the hearing impaired

57. Consistent with CHUM's commitments, the Commission requires the licensee, beginning 1 September 2002 and throughout the remainder of the licence term, to caption all local news programming including live segments. The licensee may implement this commitment using real time captioning or another technology that produces high quality captioning for live programming.

58. The Commission further requires the licensee, beginning 1 September 2002 and in each year of the licence term, to caption at least 90% of all programming aired during the broadcast day.

59. These requirements are consistent with the Commission's approach related to closed captioning by private conventional television licensees set out in Public Notice CRTC 1995-48 *Introduction to decisions renewing the licences of privately-owned English-language television stations*.

Service to the visually impaired

60. In the television policy, the Commission strongly encouraged licensees to adapt their programming to include audio description wherever it is appropriate. The Commission further indicated that, at licence renewal, it would explore with licensees

the progress that they have made to meet the needs of the visually impaired.

61. As a first step toward meeting this objective, in accordance with CHUM's commitment, the Commission expects the licensee to establish transmitting facilities that will accommodate a Secondary Audio Program (SAP) channel so that it may offer descriptive video services (DVS) at some time in the future.

Industry codes

62. As proposed by the licensee, the Commission is imposing conditions of licence requiring the licensee to adhere to the Canadian Association of Broadcasters' (CAB) codes relating to gender portrayal, advertising to children and violence in television programming.

Interventions

63. The Commission acknowledges the interventions submitted concerning these applications and has considered all of them in reaching its decision.

Related CRTC documents:

• Public Notice
1999-97 –
*Building on
success – A policy
framework for
Canadian
television*

• Public Notice
1999-206 –
*Implementation of
the TV Policy*

Secretary General

*This decision is to be
appended to the licence. It is
available in alternative format
upon request, and may also be
examined at the following
Internet site:
<http://www.crtc.gc.ca>*

Appendix to Decision 2000-219 /

Conditions of licence

1. a) The licensee shall broadcast, at a minimum, in each broadcast year, an average of 8 hours per week of Canadian programs in the priority program categories between 7 p.m. and 11 p.m.

For the purpose of this condition of licence the priority program categories are as follows: Canadian drama programs (category 7); Canadian music and dance (category 8a) and variety programs (category 9); Canadian long-form documentaries (category 2b); Canadian regionally-produced programs in all

categories other than News and information (categories 1, 2 and 3) and Sports (category 6); Canadian entertainment magazine programs.

b) For the purpose of fulfilling the above-noted condition, the licensee may claim the new dramatic programming credit set out in Public Notice 1999-205, as may be amended from time to time.

The licensee is not entitled to claim the dramatic programming credit set out in the appendix to Public Notice CRTC 1984-94 and appendices I and II to Public Notice CRTC 2000-42.

2. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code for Television and Radio Programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.

3. The licensee shall adhere to the provisions of the CAB's *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

4. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary Code Regarding Violence in Television Programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council.

Dissenting opinion of Commissioner Cindy Grauer

I would not approve an application for a second television station in Victoria.

I would approve the application by CFMT-TV a division of Rogers Broadcasting Limited for a new ethnic television station in Vancouver and a transmitter for the station in Victoria.

I would not approve an application for a second television station in Victoria because the advertising revenue available is not sufficient to support another locally oriented television station. In addition, the entry of another station places at risk the local orientation of the existing station due to the loss of revenue from fragmentation of the market. Given the proximity of Victoria to Vancouver, both stations can readily shift their programming focus to the much larger Vancouver market in order to attract revenue.

I would approve CFMT's application for a new ethnic television station in Vancouver. According to the majority of commissioners (the majority):

The Commission shares the views of those who consider that Vancouver's ethnic communities should have access to additional local programming, especially given the increasingly multicultural nature of the market. (Paragraph 31)

I agree with the majority's view. I do not, however, agree with the majority's decision to deny Vancouver's multicultural community's access to additional programming, particularly on the grounds that a second station in Victoria should take priority over the 750,000 members of Vancouver's multicultural communities who have no free over-the-air ethnic service:

Given its decision to license only one station [in the Vancouver/Victoria market], the Commission considers that the need for an additional television service to serve Vancouver Island should take priority at this time. (Paragraph 31)

As I discuss below, the Victoria market cannot support a second locally oriented station.

This licensing decision is a bitter development for the large and growing multicultural community in what is arguably Canada's most culturally diverse city. The Commission has missed an important opportunity to signal to this vibrant and dynamic community that it recognizes the social and cultural transformation that has taken place on Canada's West Coast. A local ethnic service would have added program diversity, made a significant contribution to the goals of the *Broadcasting Act* and demonstrated the Commission's commitment to the values articulated in the new ethnic policy.

The Vancouver/Victoria television market

The Vancouver/Victoria television market or the Vancouver extended market is considered one market by the Bureau of Broadcast Measurement (BBM) and by the Commission. Five private conventional stations are now licensed to serve this extended market, three in Vancouver and, as of today, two in Victoria. Vancouver and Victoria, however, are, as the Commission recognizes, very different and distinct communities separated by Georgia Strait. Each city has a unique demographic profile and culture. Local programming oriented to one city holds little appeal to the other city, a situation recognized by the majority when it acknowledges demand by Victoria and Vancouver Island viewers for more local service.

The Vancouver extended market consists of the Vancouver central market, the Victoria central market, and most of the Fraser Valley and Vancouver Island. According to BBM, the population of the extended market is just over three million. As the table below shows, two-thirds of the population lives in the Vancouver central market.

The table also shows why Victoria cannot support two locally oriented television stations, a matter that I discuss later. The majority's decision has reduced the population per station by 50 per cent to 170,000 in a market that is obligated to produce 50 hours of local programming each week. This stands in stark contrast to the Vancouver central market where the population per station is 700,000, more than four times the population per station in the Victoria central market.

The figures related to the number of private stations and hours of local programming are effective September 1, 2001.

Les données se rapportant au nombre de stations privées et d'heures de programmation locale seront en vigueur à compter du 1^{er} septembre 2001.

	<i>Central market - MARCHÉ CENTRAL</i>	<i>Vancouver</i>	<i>Victoria</i>
	Population	2,000,000	339,000
	Growth 1991-1997/ Croissance 1991-1997	17.5%	7.1%
	Private conventional stations/ Stations conventionnelles privées	3	2
	Population per private conventional station/ Population par station conventionnelle privée	700,000	170,000
	Private conventional station weekly local programming/ Programmation locale hebdomadaire des stations conventionnelles privées	74.5 hours/heures	50 hours/heures

Victoria cannot support a second private conventional television station

The majority has not fully explored how local programming will be financed. The majority assumed that because demand exists in Vancouver for additional advertising inventory that this demand extends to programming oriented to Victoria audiences. In my opinion, this is not a valid assumption. In addition, sufficient advertising revenues are not available in the Victoria market to finance the 27 hours of local programming commitments made by CHUM and the 23 hours of local programming commitments undertaken by Global in their acquisition of

Victoria ne peut soutenir une deuxième station de télévision conventionnelle privée

La majorité n'a pas entièrement exploré la question du financement de la programmation locale. Elle a supposé que, comme il existe un surplus d'inventaire de publicité à Vancouver, cela est également le cas pour les émissions destinées aux auditoires de Victoria. À mon avis, cette supposition est erronée. En outre, les recettes publicitaires dans le marché de Victoria ne sont pas suffisantes pour financer les 27 heures d'émissions locales que CHUM et Global, dans son acquisition de CHEK, se respectivement engagées à offrir. Cela est d'autant plus vrai si l'on tient compte des

CHEK, particularly given that CHUM's projected revenues are 40 percent local and 60 percent national.

Advertisers buy programs – not stations. Advertisers want to reach certain demographics in specific geographic markets. The price advertisers will pay corresponds to the size and desirability of the market and the target demographic within that market. The rates an advertiser will pay to reach a small market will be commensurately less than what the same advertiser will pay to reach a large market everything else being equal. While there is evidence of unmet demand by advertisers, including Vancouver retail advertisers, to reach Vancouver audiences, there is no evidence of increased or unmet demand by advertisers to reach Victoria audiences. It is erroneous to assume that because there is a demand by advertisers for television inventory in Vancouver that this demand will apply to all stations and programs in the extended market.

Vancouver is a significantly larger market than Victoria. The advertiser wanting to reach Vancouver audiences will find the programs that will deliver the desired demographic in that market. Because Vancouver is almost five times as large as Victoria, the price an advertiser will pay to reach a specific demographic in Vancouver will be that much higher than the price an advertiser will pay to reach the same demographic in the Victoria market. The only way for a Victoria station to generate the same revenues as a Vancouver station is to orient the programming to Vancouver.

The programming proposed for the new station, particularly the local programming, will be oriented to a smaller market – Victoria. The revenues from national advertisers wanting to reach this audience will be considerably less than the same advertisers will pay for local programming oriented to Vancouver audiences.

Responding to questions at the hearing about the advertising environment a Victoria stand-alone licensee would encounter, CHUM said:

The Vancouver revenue that you could generate against that station if there was no new Vancouver station would really be national selective dollars by and large. There aren't a lot of retailers in Vancouver who are going to spend a lot of money on the Island at retail, certainly not to get back to Vancouver because they are not going to be watching the Victoria based newscasts. The local programs that are designed for the Island, the Islanders are going to watch those. (Page 427)

The record of the proceeding speaks to demand by advertisers for inventory in the Vancouver market. There was little evidence of demand from Victoria advertisers for additional television inventory.

Most indicators are that CHEK is meeting the demand of Victoria advertisers. Given the limited advertising dollars in the Victoria market, a second station, particularly one that depends on local advertising for 40 percent of its revenue, will drive down the price of TV time on both Victoria stations. This would

jeopardize not only the ability of these two stations to sustain their local programming commitments but also the stability of the radio advertising market in Victoria where the Commission recently licensed one new FM station and approved an AM/FM conversion. The extent to which the Victoria market could support the introduction of new FM stations was discussed extensively at that hearing.

I do not believe this market can sustain the highly local programming orientation of both CHUM and CHEK. Two stations competing for the available revenues in this market puts the local orientation of both at risk. The people of Victoria may well end up with nothing if these stations are forced to turn their programming orientation to Vancouver to sustain financial viability.

I share the concerns expressed by the people of Victoria who want more local programming. Licensing stations in markets that can't support them will not deliver it.

CBC

I also want to address here the reference by the majority in this decision to Decision CRTC 97-39 in which it licensed CIVT-TV. The 97-39 decision notes that the CRTC agreed there was a need for a second service particularly in the absence of an English-language CBC television station to serve the provincial capital. The 97-39 decision does not address the ability of the market to support a second private conventional station in Victoria.

At no time during this proceeding was there any discussion of the differences inherent in licensing a second private conventional station and a CBC station for Victoria. Licensing a stand-alone private conventional broadcaster is not, in my view, a comparable alternative or suitable substitute for the public broadcaster.

I would have licensed the ethnic service

I agree with the majority that the Vancouver extended market can sustain the licensing of one additional television service. There is ample evidence of advertiser demand for additional television inventory in Vancouver. I would have licensed the ethnic multilingual station proposed for Vancouver by CFMT-TV to serve three-quarters of a million people who are unserved by any free, local over-the-air ethnic television service.

According to 1996 census data, there were over 700,000 people in the Greater Vancouver area who have a mother tongue other than English, French or an aboriginal language. This is twice the number of people who live in Victoria. Vancouver is now arguably the most culturally diverse city in Canada, and while the multicultural communities in both Montréal and Toronto are served by a free, local over-the-air ethnic television service, Vancouver has none.

Justice Wallace Oppal of the Supreme Court of British Columbia appeared at the hearing in his capacity as Chairman of the Law Courts Education Society in support of the ethnic application. He submitted that the population of Vancouver is now 44 percent visible minority, over 50 percent of students in Vancouver schools have English as a second

language and two-thirds of all immigrants come from Asia.

This demographic reality presents a challenge to the people and institutions of Vancouver and Canada - a challenge the Commission's ethnic policy was designed to address.

The Commission released a new ethnic broadcasting policy in July 1999 and this would have been the first television application to be considered under the revised policy. In the policy the Commission states:

The Commission has decided to continue the basic framework of the 1985 ethnic broadcasting policy. It considers that this policy has led to a substantial increase in the diversity of the Canadian broadcasting system through the emergence of many new ethnic broadcasting stations. Many participants in the review emphasized how valuable the programming of these stations was to them, their families, their cultural groups and to their integration into Canadian society... The policy will continue to provide a framework for broadcasting that fosters opportunities for greater understanding among people with different cultural backgrounds. As is the case with larger groups, the Commission continues to consider that smaller ethnic groups benefit from a basic level of broadcasting in their own languages and from programming that assists in their full participation in Canadian

society, reflects their culture and promotes cross cultural understanding.

In conclusion, the Commission stated that it

expects that the revised policy will support the continued growth of high quality third-language Canadian programming.

The review clearly demonstrated that there was a wide demand for ethnic programming. At consultations in Vancouver the multicultural community was particularly eloquent about its desire for a local ethnic television station.

The majority shares the view of those who consider that Vancouver's ethnic communities should have access to additional local programming. I do not accept the rationale of denying this application because there is access to ethnic television programming from other sources. Virtually all the other sources of ethnic television are not local and are available only through cable (a community channel with very little local originated third language programming) and for a price (pay and specialty services with no local programming). Limited Punjabi programming (2 hours on weekend mornings) is available.

There are individuals within both the mainstream and the ethnic community who cannot afford or do not wish to have cable or pay television. The ethnic policy anticipates this and is dedicated to delivering this diversity in over-the-air services. Given the language barrier, free, off-air delivery of local ethnic programming is very important.

CFMT filed its application in 1998. The Commission issued a call for applications only after the ethnic policy review was completed. The Commission recognized in the new policy that the demand for ethnic services existed. In their application CFMT made significant commitments to third language programming, particularly local third language programming. They also included a proposal to fund and broadcast ethnic documentaries making a contribution to the priority programming categories in the new television policy.

At the commencement of the Vancouver hearing the opening remarks included the following:

today's applicants should clearly demonstrate to us that there is a need in the market for the proposed station and service. The Commission will examine these applications in light of the objectives of the *Broadcasting Act* and the new television policy issued last June. With this in mind the Commission will pay particular attention to the following elements which can be found in Public Notice CRTC 1999-101:

- The contribution that the new service will make toward achieving the objectives of the *Broadcasting Act*, notably the production of local and regional programs;

- How the applicant intends to promote the development of Canadian talent, particularly local and regional talent;
- How the applicant will contribute to the priority programs nationally as defined by the TV policy;
- The possibility of concluding program co-investments and co-purchase agreements with Canadian or foreign broadcasters;
- The new services proposed audience;
- The soundness or the feasibility of the business plan, the validity of the market analysis and the advertising revenue forecasts;
- The availability of financial resources to meet the requirements identified in the business plans financial projects; and

- Finally, the impact on the existing players in the Vancouver extended market as well as nationally.

Of course, while being aware of Canadian television programming, the applicants should also address the needs and tastes of their respective markets, not forgetting the viewers.

It is difficult for an applicant for an ethnic station to succeed in a competitive process against applicants for conventional stations. Applications filed under the ethnic policy are designed to meet the goals of that policy. Applications filed under the television policy are designed to meet the goals of that policy. Conventional stations in large markets generate, for the most part more revenues than ethnic stations and are in a position to make larger contributions to the convention television policy and the priority program categories contained in that policy. I believe that ethnic applications should be looked at in a different light given these considerations.

New American multilingual service

A new television service, located in Bellingham Washington, and oriented to Vancouver has recently received Federal Communications Commission approval to boost their power to 3,300,000 watts. It programs exclusively to ethnic markets from 5:30 p.m. to 11:30 p.m. daily.

There is every indication that this station is targeting the Vancouver multicultural community like KVOS targets the Vancouver English language market. Clearly its orientation is to Vancouver as Bellingham, home of KVOS, is a small border community with no discernible multicultural population.

The Commission has missed an opportunity to license a Canadian station to serve Vancouver's large and growing multicultural community. Today's decision will clear the way for revenues and audiences that could have accrued to a Canadian station and benefit the Canadian broadcasting system to flow south of the border and allow another US border station to establish a foothold in this market.

Craig superior to CHUM

As I have discussed above, Victoria cannot support another highly local service. I am compelled, however, to express my disagreement with the majority's choice of CHUM. In my opinion, Craig's proposal is more substantial and would contribute more to the goals of the *Broadcasting Act*, the Commission's policy objectives and the elements outlined at the outset of the hearing.

The elements that would be considered when evaluating the applications are identified earlier in this dissent. It is illuminating to compare elements of the Craig and CHUM applications for a Victoria service.

First, the decision speaks of licensing a Vancouver Island service. It is worth pointing out that CHUM applied for a Victoria service, and that Craig applied for a Vancouver Island service. The coverage maps filed with CHUM's Victoria application show modest coverage over Greater Victoria and the Saanich Peninsula with a low-power transmitter. CHUM's high power Vancouver transmitter will cover Greater Vancouver, the lower Mainland, the Fraser Valley and parts of the Gulf Islands east of Nanaimo and Cowichan. The population of Vancouver Island is spread over a vast geographic area. The residents of Vancouver Island north of the Saanich Peninsula who do not have cable will not be able to pick this signal up off-air.

Craig's proposed transmitters at Victoria and Campbell River would have provided extensive coverage on Vancouver Island, from Victoria in the south and Campbell River in the north. Its Victoria transmitter would also provide coverage to the Greater Vancouver and Fraser Valley.

Craig proposed one bureau in Nanaimo and three sub-bureaux throughout the Island. CHUM proposed one bureau in Nanaimo. Craig proposed more local programming, more spending on independent production and more total Canadian program spending. Craig proposed to source 50 percent of its priority programming from Western Canada and proposed a local development office. CHUM made no such commitments.

The majority has referred to the television policy and its emphasis on strong national players in its reasons for licensing CHUM. Strong national players in Canada subsidize service to smaller cities across this country. Both Global and CTV serve smaller, less attractive markets as well as the larger, more

profitable ones. CHUM has refrained from applying for licences in other markets in Western Canada (or Canada for that matter) saying at the hearing:

Most notably, we did not apply for Alberta in the competitive round four years ago because we wanted to signal that Vancouver was the one that counted most in CHUM Television's future. This is still the case. (Page 15)

The only market in Western Canada CHUM is interested in is the highly profitable, second largest English language market in Canada – Vancouver, bypassing the less lucrative markets.

By licensing CHUM, whose only other television operations are in the densely populated southern Ontario market, the majority has put at risk, if not foreclosed on, Craig's opportunities to grow. In licensing CHUM, Craig is denied perhaps forever, the opportunity to enter the Vancouver market and help offset the costs of providing service in Alberta and Manitoba. In using the rationale of creating strong national players the Commission could be seen to be sending the message that there is no place in the Canadian broadcasting system for the development of strong regional players. This is particularly disappointing given the strength of Craig's application, their long history and the contribution they have made to the development of the broadcasting industry in Western Canada.

What has the Commission licensed

CHUM stated at the hearing in response to a question about the severability of their applications:

We are absolutely prepared to live by what we have here by way of proposals. We are offering this application (Vancouver) as separate from the other application (Victoria). They each stand alone and each stood independently and on their own. (Page 68)

CHUM made, however, over the course of the hearing, changes to the Victoria application, some of which, as they admitted, would clearly affect the business plan. Again in response to a question about severability, CHUM said:

It would certainly affect the business plan, but each variable will change it in a different way. (Page 35)

It is difficult to know just how their business plan is affected and what the Commission has licensed.

One example of the difficulty of understanding the business plan, is the majority's reference in the decision to the fact that CHUM's proposed stations would repatriate \$5 million in revenues from US conventional stations including KVOS. In fact, it would appear that the Victoria station,

according to the applicant, would repatriate only \$1.8 million (Page 60).

There was discussion of moving some programming from Vancouver to Victoria if Vancouver was not licensed and Victoria was (Page 414). But we don't know what those programs are or how they would affect the repatriation figures or the orientation of the service, although it is clear from the transcript (Page 413) that they expected their revenues to increase by 25-30 percent. They also said the numbers and projections were developed on the premise of having two stations. (Page 412)

In my view, the two applications, effectively, were not filed as severable and stand-alone.

CHUM's revenue projections and programming for this station changed over the course of the hearing and we don't know the extent or ramifications of the changes.

In conclusion, I agree that the Vancouver extended market can support another television station, but not a second locally oriented station located in Victoria. I would have licensed the ethnic service in Vancouver, delivering to that large multicultural community market their first free local over-the-air service. While I would not have licensed either of the island applicants, I believe Craig presented a stronger application. I also believe the Commission has licensed an application for which it does not have a business plan.

I am in complete agreement with Commissioner Barbara Cram in her addition to this dissent.

**Dissenting opinion of Commissioner
Barbara Cram**

I am in total agreement with the dissent of Commissioner Grauer. I do however wish to add the following:

**It is unclear what exactly the majority
licensed**

In Phase 1 of the hearing each of the applications was heard in turn. Given that CHUM had submitted two applications, one for Vancouver and one for Victoria, clearly one of the issues with them would be the severability of their applications. In filing the two applications, CHUM was certainly well aware of Commission policy against dual ownership in single markets.

Thus on their first panel, for the Vancouver station, Mr. Znaimer stated "We are offering this application as separate from the other. They each stand alone. They stand better together, but they do stand alone." (p. 68-69 transcript)

On the second CHUM panel for their Victoria application, a "stand-alone" Victoria station would be much different from the application as filed:

We think our revenue projections would go up about 25 to 30 percent, so we would come in around thirteen and a half million dollars. (p. 414 transcript)

We might take some of the programming that we had on the Vancouver station, some of that, and put it over to "Victoria" (ibid.)... But we would not in any way adjust the local programming schedule. (p.416, transcript)

And yet

we looked at it, it is obviously theoretically possible for someone to come up with an application that would just serve Vancouver Island, but the economics would be such that they couldn't commit to the same level of local programming that we are able to commit to by virtue of the revenues from the broader Vancouver area, so for us it was a balancing of how do you provide local service and sustain that on a reasonable revenue base. We felt this was the best approach [this referring to dual licensing]. (p. 420-421 transcript)

These numbers were developed and all of the projections developed on this premise of having the two stations. Ron made the point that if we licensed for Victoria alone the revenues would go up but so would the costs... (p. 423 transcript)

Later, after discussing a different topic, CHUM volunteered the following:

In looking at the revenue that we would generate on a Victoria alone scenario, we are comfortable with bringing some of those commitments over to the Victoria alone scenario. The commitment we would be prepared to make is a 12 million special Canadian programming commitment on the Victoria alone scenario. (p. 437 transcript)

It should be noted that this latter statement increased the commitment of CHUM twelve-fold from its original application - closer to but not equal with the commitment of Craig. No further particulars showing specific revenues and specific expenses over the first seven years were provided for the Victoria stand-alone proposal. Neither was a specific program schedule provided showing the changes that seem to have been contemplated.

The majority has now accepted the increased commitment of \$12 million, something without which, acceptance of CHUM's application would have been totally untenable.

The Commission has a long established policy of not granting a person two conventional television licences for the same market. CHUM was well aware of this policy. CHUM should have filed two truly separate and severable applications - not applications that presume an exception will be made. Notwithstanding what the first CHUM panel stated, I do not consider that CHUM has filed these applications as stand-alone. As a result, at the public hearing CHUM made a change to its application for Victoria to increase its spending commitment to \$12 million, in addition to the other changes referred to. I would not have accepted it.

The repercussions however are relevant. What exactly has the majority licensed? The application as filed referred to the Victoria station programming being similar to their more laid back; less zippy format called "NewNet" as in the Pembroke and Barrie stations. In their verbal presentation with Victoria as a stand-alone, the panel stated they would move some of their programming from the proposed Vancouver station that was formatted as a Citytv format. First they said the local programming would not change and subsequently they stated with the economics they could not commit to the level presumably stated in their application as filed. Based on the application as filed, the repatriated programming from KVO5 would only amount to \$1.8 million as opposed to \$5 million for the Vancouver station (p. 60 transcript) and yet some programming would be moved over - does this include more repatriation? It should be noted that the majority used the issue of repatriation as a rationale for their decision. Based on the record, the Victoria CHUM proposal is the worst in terms of dollar amount of repatriation.

CHUM said the Victoria stand-alone would earn 25% to 30% more revenue than stated in their application as filed. Their commitments, save and excepting the independent production, should change but presumably have not. Their expenses will change because they will not have the synergies with a Vancouver station but we do not know how nor if their commitments as to employment will be the same.

Presumably programming, revenue and expenses are relevant to competitive television applications. The Commission requires this information with each and every application. Without this specific information, I do not know how the majority compares the CHUM Victoria stand-alone application with the others to arrive at its conclusion of the best application.

Craig's superiority includes the promotion and support of independent production in the west

As stated in the dissent of Commissioner Grauer, the opening remarks listed the criteria to be used in assessing the applications, two of which involved the development of local and regional talent and programs.

The Commission is well aware of the demise of WIC. WIC, a broadcaster headquartered in British Columbia, commissioned and licensed a substantial amount of independent production in Western Canada. WIC did this not as a result of a benefits package, a licensing commitment, or a condition of licence but as a result of the fact of it being in the West and knowing the quality of the producers, similar to broadcasters being headquartered in Toronto and knowing the quality of the producers there.

Craig's \$12.7 million commitment to independent production was specifically directed to local and regional talent but was significantly enhanced by several facts. An individual intimately involved with the local production scene would have done the commissioning of independent production on Vancouver Island. This individual previously worked with Telefilm in Vancouver and subsequently with the Vancouver Island Film Commission. Additionally, Craig was going to provide an assistance structure for producers providing for skills and script development – the cost of which would be in addition to the monetary amount committed. In contrast, CHUM's monetary commitment became \$12 million but there was no commitment as to commissioning nor for assistance for the production community.

Craig, like WIC, is a western based broadcaster and has been based in the west for over 50 years. Its record, both in its award winning local news and previous commitment to independent production in the west, is unsurpassed.

**'Strong players' are not created –
players become strong by succeeding
in competition**

The majority has referred to the television policy and its emphasis on "strong players". It is my view that the majority decision creates exactly the opposite for the following reasons:

a) Whilst CHUM is made strong, this is at the expense of Craig which now runs the risk of becoming a marginal player. By the numbers of the majority CHUM will now have a reach of 60% and Craig will have 17%. By Craig's numbers, Craig and CHUM would have been approximately equal in reach if they had been licensed.

b) CHUM now has a reach of 60% but it is significant as to where this reach is. CHUM was very clear at the hearing that it chose not to apply for the Alberta stations when they were licensed. CHUM sold its stations in the Maritimes. Thus the reach of CHUM extends only to the more densely populated areas of Canada such as Ontario and now Vancouver. CHUM has no smaller market coverage or obligations however its competitors, Global, CTV and Craig, do. Thus while Global and CTV use their revenues from larger markets to subsidize their smaller markets, CHUM has no such smaller markets. Thus, licensing of CHUM may very well reduce the strength of the national "strong" players and may well have an impact on their

ability to continue to cover the smaller markets.

c) I do not believe strong 'players' are created in this manner. In this and any other marketplace, strength is gained by succeeding in competition. Our role, I believe, is to create a level playing field for all the various parties and to maintain as far as possible a fair and level field. Thereafter, by skill, innovation, creativity, the stronger 'players' emerge. Moreover they have gained the skills to continue to succeed in the increasingly competitive national and global environment.

**The needs of the specific market are
the priority**

This is the essence of my disagreement with the majority. I do not accept that an unknown quantum of increased priority programming on 6 Ontario stations (the NewNet stations) and the belief (albeit misguided in my view) that a strong 'player' has been created is more important or is in priority to the needs of the specific market. In a normal competitive process, I believe the best applicant best suited for the specific market should be licensed. In the Vancouver market but for the ethnic fact and the Vancouver market sustainability issue, Craig should have been licensed.

But in a contest between conventional commercial applications versus an ethnic application the criteria for assessment must be different

With respect to conventional television applications, save and excepting the last licensing round in Vancouver, the Commission has never been in a position of assessing and rating ethnic conventional applications versus mainstream conventional applications. As to the previous licensing round, Rogers had applied for an ethnic station and the Commission opted for another English-language conventional station. However, as to the present applications, I do not believe we can assess ethnic applications on the same criteria, otherwise there would be no need to have an ethnic broadcasting policy.

First, I believe we cannot compare the two types of applications based on quality and type of programming. The ethnic policy specifies the requirements for ethnic programming and given its content and specificity, it is my view it has excluded any comparative assessment of programming in situations such as this. Therefore in comparing programming in conventional applications and ethnic applications, the ethnic application should be considered equal to all conventional applications if the programming meets the requirements of the ethnic policy.

Secondly, given that the manner of financing ethnic stations is similar to conventional stations, i.e. the advertising revenue from foreign programming subsidizes the ethnic/Canadian programming, the market must be able financially to sustain a new service. I agree with the majority that the

Vancouver market can sustain one new service, albeit, in Vancouver.

Next, there should be an assessment of supply and demand. As to supply, the Vancouver English-language market, excluding Vancouver Island, is very well served off-air by many conventional stations including CBC, CTV, Global, and, at present, one WIC station. Based on Statistics Canada 1996 census data, this means one station per approximately 700,000 individuals (excluding CHEK). As to Vancouver Island, one of the WIC stations, CHEK, is supposed to be directed towards the Victoria market. Again, based on the 1996 census data, with the majority decision, Victoria will now have one station per 170,000 individuals, because Victoria's population is 339,000. Concurrent with this decision, the Commission is issuing its decision on the sale of WIC to Shaw, Corus and Canwest and it will be fortifying the CHEK commitment to the island. Further there is the outstanding commitment of CTV to apply for a Vancouver Island station.

As to demand, I recognize the majority felt persuaded by our prior Decision CRTC 97-39 and comments therein as to the "clear demand" among Vancouver Island residents for a new local television service. On balance, and considering my conviction that Vancouver Island cannot financially support a second service, I do not feel similarly persuaded. Consider the following:

a) The population of Vancouver Island is 700,000 whereas the relevant ethnic population at present in the Vancouver area, as stated by Rogers, is 800,000. Further, the Vancouver Island population can only be expected to increase at approximately the normal population growth rate whereas the ethnic population will increase far more given the annual immigration into the Vancouver area plus the normal growth rate. Thus, the demand for an ethnic station will increase more quickly.

b) The ethnic fact is far more visible in Vancouver than in Toronto. Both cities have, according to Statistics Canada, approximately the same number in ethnic population but due to the lower total population of Vancouver, the fact that Vancouver is a mosaic is far more apparent.

c) It also appears at least to me that the ethnicity of Vancouver and environs is an accepted fact, in that many politicians, federal, provincial and municipal and many prominent professionals come from the various ethnic communities.

d) Even if all immigration would cease entirely, which is very unlikely, there would continue to be a demand for ethnic broadcasting for the foreseeable future. At the hearing, Rogers referred to a 30-year entry time span of demand for ethnic broadcasting, this based on their experience in Toronto.

e) Finally, the Vancouver area is home to the largest ethnic population in Canada not being served by an off-air television ethnic station.

If the demand in this market were not seen as sufficient, this would mean there would never be another ethnic television station in Canada. Clearly the Ethnic Broadcasting policy contemplated otherwise. As to the Vancouver market, I do not believe we need go any further with any additional criteria given the facts as to supply and demand.

With the greatest respect to the majority, I would have licensed CFMT.

